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Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Northern California U.S. District Court Series

William H. Orrick, Jr.

A LIFE IN PUBLIC SERVICE: CALIFORNIA POLITICS, THE KENNEDY ADMINISTRATION, AND THE FEDERAL BENCH

Interviews Conducted by
Robert A. Van Nest
1987-1988

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Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the nation. Oral history is a modern research technique involving an interviewee and an informed interviewer in spontaneous conversation. The typed record is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The resulting manuscript is typed in final form, indexed, bound with photographs and illustrative materials, and placed in The Bancroft Library at the University of California, Berkeley, and other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

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William H. Orrick, Jr.
ca. 1980

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ORRICK, William H. (b. 1918) Federal Judge

A Life in Public Service: California Politics, the Kennedy Administration, and the Federal Bench, 1989, viii, 296 pp.

Service in Army Counterintelligence Corps; practice with Orrick law firm; California Democratic politics in 1950s; campaigning for Pat Brown, Harry Truman, Adlai Stevenson; with the Kennedy Administration, 1960-1965, Department of Justice including New Haven railroad bankruptcy, the Bahia de Nipe incident, New York longshoremens' strike, civil rights protest in Alabama, antitrust problems, Cuban missile crisis, communications system and Department of State including problems at a bureaucracy, selection of ambassadors, well-known antitrust lawyers; law practice in San Francisco 1965-1974; San Francisco Opera president; Eisenhower Commission on Violence; San Francisco Crime Commission; U.S. District Judge, 1974 to present (1989) including Patty Hearst sentencing, Hell's Angels trial, school desegregation, county jail conditions.

Introduction by Charles B. Renfrew

Interviewed in 1986-87 by Robert Van Nest

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PREFACE

The Historical Society of the United States District Court for the Northern District of California is a non-profit organization established by federal practitioners and judges and is dedicated to preserve and develop the history of this court. The Society's goals are threefold: 1) to marshal the sources for historical study of the District; 2) to initiate and encourage comprehensive and scholarly study of the court; and 3) to develop interpretive programs and exhibits making the fruits of this research accessible and meaningful to the legal community and the general public.

In 1980 this series of oral histories conducted by The Bancroft Library was initiated as an important effort in the furtherance of the Society's objectives. By preserving the personal reminiscences of individuals whose experiences and memory can yield valuable "oral evidence" of the court's history, the Society hopes to enhance and amplify the written record.

In addition to historical study of the District, the Society hopes to promote greater public understanding and appreciation of the role of the federal judiciary. Except for those involved in the legal process, the operation, significance, and impact of federal trial courts remains largely a mystery to most Americans. By focusing on the history and activities of the Northern District, the Society hopes to bridge this gap between the legal and lay world and even encourage other District courts to initiate similar efforts. As the nation nears the 200th anniversary of the ratification of the United States Constitution, it is an appropriate time to raise the level of public understanding by placing the contemporary role of district courts in historical perspective.

Thanks are due to the foresight and generosity of the individuals and organizations whose support make this work possible.

Robert F. Peckham,
Historical Society of the
U.S. District Court,
Northern District of California

San Francisco, California
April 1981

NORTHERN CALIFORNIA U.S. DISTRICT COURT SERIES
Interviews Completed by 1989

Harris, George B., "Memories of San Francisco Legal Practice and State and Federal Courts, 1920s-1960s," 1981.

Orrick, William H., Jr., "A Life in Public Service: California Politics, the Kennedy Administration, and the Federal Bench," 1989.

Phleger, Herman, "Observations on the U.S. District Court for the Northern District of California, 1900-1940," 1981.

Sweigert, William T., Sr., "Administration and Ethics in the Governor's Office and the Courts, California, 1939-1975," 1987.

Wollenberg, Albert C., Sr., "To Do the Job Well: A Life in Legislative, Judicial, and Community Service," 1981.

Zirpoli, Alfonso J., "Faith in Justice: Alfonso J. Zirpoli and the United States District Court for the Northern District of California," 1984.

Weigel, Stanley. In progress.

INTRODUCTION by Charles B. Renfrew

A past worthy of record or out of the ordinary is a secondary meaning of history -- and that is William Horsley Orrick, Jr. This is an oral history, for no one appreciates more or excels in the art of story-telling than Bill Orrick.

It is difficult for anyone to evaluate a fellow human being. It is even more difficult to do so upon the qualities and significance of a friend; yet there are certain qualities which define Bill Orrick that are found in his stories and in his life that need be noted.

Loyalty has been the hallmark of Bill's life: loyalty to family, friends, institutions, and ideals. I had the privilege, on a number of occasions, of accompanying Bill when he stopped by his father's house on his way home from work. This was his regular practice every Monday through Thursday. I watched and listened to the wonderful exchange of words, ideas, and love that passed between them. These were not dutiful visits but rather the natural expression of the great and extravagant love he had for his father.

Bill wrote more articles for the California Law Review than any of the members on it when his grades had not qualified him for it. This speaks not only of the man but foretells many of the subsequent stories of achievement. His desire for knowledge and willingness to work for the best possible result enabled him to approach each new task with unabashed enthusiasm, as well as the tools with which to conquer it. For Bill, excellence is not a gift which simply flows from a natural talent. It is a product of ideals and prodigious efforts. Bill's life has been an ongoing saga. As each chapter or adventure ends, he commences a new journey and starts a new task with the same enthusiasm, intellectual curiosity, and commitment to excellence that carries him through completion and readies him for the next challenge.

Bill's stories of the Kennedy administration make Camelot come alive. A speaker at the funeral of Thurmond Arnold, a predecessor of Bill's as head of the Antitrust Division, although referring to an earlier period, captured Bill's feelings about his service at that time: "Even now, we cannot think of it without a feeling of exhilaration and delight, tinged with the sadness of knowing that what has been done once cannot be done again. To the end of our days, we shall remember that time."

Bill's selection as a federal judge was the natural culmination of a lifetime committed to public service. His deep and passionate love for our judicial system, "our nation's highest calling," is the fitting conclusion to this history.

This oral history captures and conveys the pleasure and enjoyment of Bill's company. And above all, and most of all, it conveys that wonderful gift of talk: the talk in which he creates situations and universes in which actions, decisions, and a unique personal odyssey are unfolded in the listener's imagination. His voice is a constant call to duty, a reminder of loyalty and obligation. It is a record of a lifetime commitment to public service. That voice, and the memories it recalls, will be with us as long as men dare to dream and then dare to live their dreams.

Charles B. Renfrew, Esq.
Director & VP for Legal
Affairs, Chevron Corporation

January 1989
San Francisco, California

INTERVIEW HISTORY by Robert A. Van Nest

Anyone who knows him well can attest to the fact that Judge Orrick, is, above all, a remarkable storyteller. He is at ease telling stories to a large group of interested strangers as he is swapping tales over lunch with a friend or two. And Judge Orrick has a lifetime of interesting stories to tell, having campaigned in California for the likes of Harry Truman, Adlai Stevenson, Pat Brown, and John Kennedy, having served under Robert Kennedy at the highest levels in the Department of Justice, and having presided over hundreds of cases during nearly fifteen years as a United States District Judge for the Northern District of California.

It was therefore the primary challenge of this oral history to select the best stories, to organize them, and to draw them out in the most complete version possible. To that end, the Judge and I began, in late 1986, a series of sessions at which we covered each period of his life and determined which people, places, and events to comment upon in this history. Our goal was to provide a complete yet lively account of his life experiences which would enable future students of the federal judiciary to understand something about those called to serve, as Judge Orrick would put it, "in our nation's highest calling."

During the period from November 1986 through early July 1987, we met in eight separate sessions to plan the oral history. All of our work took place in Judge Orrick's library at home in San Francisco, where we worked surrounded by books, photographs, and memorabilia marking his many years of political and public service.

In planning the history, we made reference to a wide variety of materials chronicling Judge Orrick's activities and those of the public figures with whom he served over the years. The books we reviewed included: John W. Field's Rendezvous with Destiny, a chronicle of the lives of many graduates from the Class of 1937 at Yale College; The Best and the Brightest, David Halberstam's account of the Kennedy years; John Leacocos' Fires in the In-Basket, a contemporary history of the Department of State; and Joseph Barkin's The Crime and Punishment of I.G. Farben. Judge Orrick's service during the Kennedy Administration is the subject of an "Oral History Interview with William H. Orrick, Jr.," conducted for the Robert F. Kennedy oral history program in 1970, and his tenure as Chief of the Antitrust Division was reported in the publication "Report of the Assistant Attorney General William H. Orrick, Jr. in Charge of the Antitrust Division," for the fiscal year June 30, 1964. The Judge also reviewed the reports of many of the committees and commissions upon which he served, including the Report of the San Francisco Crime Commission, and the Report of the San Francisco State College Study Team of the National Commission on the Causes and Prevention of Violence.

In selecting from among the many cases which have come before him as a United States District Judge, Judge Orrick received invaluable assistance from his secretary, Sylvia Cohen, upon whose good judgment and indefatigable efforts he has relied for many years, and also from many of the nearly thirty law clerks who have served under Judge Orrick during his tenure on the bench. Each clerk was asked to submit a list and brief description of the most significant, difficult, and/or amusing cases during his or her clerkship, and the cases which Judge Orrick chose to discuss were selected from those lists.

The actual taping of the oral history took place in Judge Orrick's home over a period of six full days, on July 21, 22, 23, September 3 and 5, 1987, and January 18, 1988. The sessions were conducted deposition style, and were both taped and transcribed by Sheila Chase, a certified court reporter from San Francisco. The deposition transcript provided the basis not only for additional editing, but also for further reflections and yet additional recollections.

The editing process, which began in earnest in May 1988, took several months to complete. As usual, Judge Orrick was meticulous in his attention to detail, and this resulted in page after page of spelling and cite checks. During the summer of 1988, with the text nearly complete, Judge Orrick took the opportunity to conduct a final review to satisfy himself that the history was as thorough and as accurate as he could make it. In this task, and the many others he undertook as part of this project, he received incalculable assistance from his wife, Marion Naffziger Orrick, without whose remarkable memory this work could not have been completed.

The Judge joins me in the hope that those having the time and interest to read this journal will find it as rewarding in review as it was in the telling.

Robert A. Van Nest
Interviewer

San Francisco, California
September 1988

EDITOR'S NOTE

The oral history of William H. Orrick, Jr., judge of the U.S. District Court for the Northern District of California, is an important addition to the Northern District Court Oral History Series. Judge Orrick is the sixth person to be interviewed for this ongoing project of the Regional Oral History Office of The Bancroft Library, University of California, Berkeley. The series is sponsored by the Historical Society of the United States District Court for the Northern District of California.

In view of the breadth and scope of Judge Orrick's career, his name has long been high on the list of those to be interviewed for the series. It was fortunate for the project when Robert A. Van Nest, Esq., volunteered to serve as interviewer.

As former law clerk to Judge Orrick, Mr. Van Nest was familiar with Judge Orrick's career and his methods of working. Planning and research got under way in 1986. In preparation, Judge Orrick and Mr. Van Nest studied other oral histories done by the Regional Oral History Office and organized the Orrick interviews in accordance with standard oral history procedures. Their planning for the interview sessions was careful and complete, and included much digging into files, books, and memorabilia.

Judge Orrick and Mr. Van Nest have produced a volume that details the varied aspects of Judge Orrick's career and also highlights significant perceptions about our government and society and about our legal processes. Judge Orrick's warmth and interest in his colleagues throughout his career come to life in his reminiscences and anecdotes, and Mr. Van Nest's thoughtful questions were instrumental in eliciting these recollections.

We would like to thank Judge Orrick and Mr. Van Nest for this outstanding contribution to the Northern District Court Historical Society's continuing effort to document legal history. Our appreciation also goes to members of the District Court Historical Society. The efforts especially of Judge Robert F. Peckham, chairman of the board, and Mike Griffith, court archivist, were most helpful in producing this volume.

Sylvia Cohen, secretary to Judge Orrick, was most helpful in arranging meetings and coordinating plans. We are also grateful for the professional work of the people who did the word processing. Sheila Chase, an experienced court reporter, took down the record of the interviews and transcribed the draft; several sets of corrections were accomplished by Susan Graham; and Elizabeth Kim put the final product into the format of the Northern District Court Series.

Carole Hicke
Series Director,
Northern California United
States District Court Series

December 1988
Regional Oral History Office
The Bancroft Library
University of California at Berkeley

ORRICK, William H., Jr. (*Judge, United States District Court for Northern District of California*) Appointed for life by President Richard M. Nixon to term beginning Aug 28, 1974. Born San Francisco California Oct 8, 1915 to William H. and Mary Downey Orrick. Married Marion Naffziger Dec 5, 1947. Children Mary-Louise (Peterson) March 20, 1949, Marion (Sproul) Oct 16, 1951 and William H. III May 15, 1953. Episcopalian. Educated at Yale University B.A. 1937 and University of California LL.B. 1941. Admitted to practice California 1941. In legal practice San Francisco 1941-61 and 1965-74.

Assistant U.S. Attorney General in charge of the Civil Division, Department of Justice Washington D.C. Jan 1961 to May 1962. Deputy Undersecretary of State for Administration, U.S. Department of State Washington D.C. May 1962 to June 1963. Assistant U.S. Attorney General in charge of the Antitrust Division Department of Justice Washington D.C. June 1963 to Aug 1965. Visiting Professor of Law University of California at Berkeley 1965-66. Fellow American Bar Foundation since 1970. Member San Francisco Lawyers Committee for Urban Affairs 1967-74, Executive Committee Lawyers Committee for Civil Rights Under Law 1963-74, American Judicature Society, State Bar of California (Member 1953-58 and Chairman 1958 Committee on Corporations, Committee on Unauthorized Practice of Law 1958-59), Bar Association of San Francisco (Director 1958-59, Secretary and Director 1973, Treasurer and Director 1974), Federal and American (Former Council member Antitrust Section, member General Litigation Section, Corporate Banking and Business Law Section, Section on Individual Rights and Section on International Law) Bar Associations. Received Citation Award from Boalt Hall School of Jurisprudence. Named Alumnus of the Year by University of California 1980. Captain U.S. Army 1942-46. Democrat.

Mailing address: P.O. Box 36060, San Francisco 94102.

Office: U.S. Courthouse, 450 Golden Gate Avenue, San Francisco 94102.

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*Mrs. Norman B. Livermore III

WILLIAM H. ORRICK, JR.

Practitioner, public servant, teacher and judge, you have rendered distinguished service to the nation, the community, the legal profession, and the law school from which you graduated just forty years ago. Two departments of the United States Government, State and Justice, have benefited from your loyal service; national, state, and local bars have had your good advice and wise counsel; and the community's religious, cultural, and charitable organizations are in your debt for years of dedicated attention to their needs. Your insistence on dignity, decorum, and reasoned arguments in your courtroom has allowed the light of justice to prevail over the heat of passion.

Bill Orrick, your fellow members of the Boalt Hall Alumni Association, proud of your accomplishments, take great pleasure in awarding you this citation.

Given at Berkeley, California, this 6th day of November, 1981.

ATTEST:

B. J. Kirwan

President

UNIVERSITY OF CALIFORNIA • LAW SCHOOL ASSOCIATION • BOALT

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name William Horsley Orrick Jr.

Date of birth October 10, 1915 Birthplace San Francisco, Calif

Father's full name William Horsley Orrick

Occupation Lawyer Birthplace Oakland, Calif

Mother's full name Mary Penney

Occupation House wife Birthplace San Francisco Calif

Your spouse Marion Neff Erickson

Your children Mary-Louise Peterson, Marion Orrick Livermore, William Horsley Orrick III

Where did you grow up? San Francisco, California

Present community San Francisco, California

Education Thacher School, Ojai, Calif; Hotchkiss School, Lakeville, Conn; Yale University, B.A.; U.C. Berkeley, Boalt Hall of Law

Occupation(s) United States District Judge for the Northern District of California

Areas of expertise Law

Other interests or activities Tennis, Camping, Horseback Riding, Hiking

Organizations in which you are active United States District Court for the Northern District of California

AUTHOR'S FOREWORD

Van Nest: Judge Orrick, it is July 21, 1987, and we are here in your living room with a court reporter. Can you tell us what you understand to be the purpose for the interview we are going to begin today?

Orrick: This oral history has been prepared at the request of Chief Judge Robert F. Peckham, Chairman of the Historical Society of the United States District Court for the Northern District of California. Judge Peckham, along with Mr. John A. Sutro, a prominent, nationally known San Francisco lawyer, formed the Society. This Court, in existence since 1850, has in its archives many interesting briefs and opinions, including those rendered in connection with the grants of California lands made by Mexican owners during the period before California became a state of the United States. Another reason for forming this Society was to furnish lawyers, judges, and scholars information concerning judges of the Court and the parts they played in local, state, and national history.

The Society has had several exhibits in the courthouse. One had to do with admiralty and the sinking of the Argentine ship, the Rio de Janeiro off the Golden Gate in 1901. Another exhibit had to do with the remarkable Field brothers. Cyrus, you may recall, laid the first cable across the Atlantic. David Field codified the procedural law in New York. And Stephen J. Field was a member of the Supreme Court of California and a long-time member of the Supreme Court of the United States.

It is hoped that oral histories will make it possible for lawyers and judges to know what kind of people served on the Court over the years. So far, oral histories obtained with the assistance of the Regional Oral History Office of the Bancroft Library at the University of California have been produced for California Supreme Court Justice Jessie W. Carter, California Supreme Court Chief Justice Phil S. Gibson, Chief Justice of the Supreme Court of the United States Earl Warren, United States District Judge William C. Sweigert, United States District Judge Albert C. Wollenberg, and United States District Judge Alfonso J. Zirpoli. The primary reason I have taken the time to prepare this history is because Chief Judge Peckham suggested I share some of my experiences during my fifteen years on the bench as well as my experiences in the Kennedy and Johnson Administrations.

I can state with certainty that this oral history would never have seen the light of day without the imaginative and careful assistance of Robert A. Van Nest, one of my very best law clerks, who is now a distinguished partner in the firm of Keker & Brockett in San Francisco.

Each time a [person] stands up for an ideal, or acts to improve the lot of others...he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.

-- Robert F. Kennedy

I. GROWING UP AN ORRICK

A. The Downey Family

Van Nest: Judge Orrick, I want to begin our interview by finding out something about your family background. Starting with your mother's side, can you tell us where your family came from, what kind of people they were, and how it was they happened to come here to California?

Orrick: So far as my grandparents on my mother's side goes, I know very little. I do know that my grandfather was Andrew Downey, that he came from Donegal, Ireland, that he lived for a time in Oakland, that he married my grandmother Sarah Jean Wright in Oakland, and later on he moved to Berkeley. William Jennings Bryan, I believe, was his cousin.

I regret very much that I never played the game of "Roots" with my parents. I was always too busy doing something else than to worry about that. So, I have tried on trips abroad to locate the Downey property or Andrew Downey, without success. I really don't know much more than that about them.

Van Nest: Did you ever meet the Downeys?

Orrick: When I was 16 months old, my mother told me I met my grandfather. I was told that I was dandled upon his knee, when he was sick. Shortly thereafter in 1916 he passed away.

Van Nest: As far as you know, when did Andrew Downey arrive here in California?

Orrick: I believe in the 1870s.

Van Nest: Do you know what it was that brought him here?

Orrick: No, I do not.

Van Nest: Do you know what sort of business he got involved in once he arrived?

Orrick: Yes. He was in the real estate business. He owned a large block in Berkeley bounded by Forest Avenue, Garber, Piedmont Avenue and College Avenue. It was on that property that my mother and father built a house, my aunt and uncle built a house, and also a fourth house was built by my Uncle George Downey. Grandfather Downey owned land going down to Shattuck Avenue or Telegraph Avenue on which wheat was grown. He also owned property in San Francisco.

Van Nest: Where was that property located?

Orrick: I am told that that property was located on the corner where Sutter joins Market Street. He also owned other property south of Market Street.

Van Nest: That is one of the most prominent addresses in San Francisco today, isn't it?

Orrick: Yes, it certainly is. After the great 1906 fire, he came over to San Francisco and inspected his burned property and he also inspected the property that he had on the other side of Market Street, the south side.

Van Nest: How much property did he have there?

Orrick: I can't tell you accurately. I do know that he had property on Rincon Hill, which is where the post office now is, and that there were other properties south of Market Street. He owned a large building, which was used as a garage at Third and Howard Streets, and then some small properties under the San Francisco Bay Bridge. His task was to find out and predict which would be the most valuable properties. He determined that the properties south of Market would be more important than the properties on Montgomery and Market and in that area, upon which all these new buildings are now built.

Van Nest: Today?

Orrick: Today, yes. So, he made a bum call, regrettably.

Van Nest: And sold the property north of Market?

Orrick: And sold the property north of Market. Market, you know, was known as The Slot, and he sold his property north of The Slot.

Van Nest: And he held onto the property south of Market?

Orrick: Yes. And we liquidated it only very recently. It was a constant headache to my father, and later to myself, to ride herd on those pieces of property. One was on Minna Street and one was at Third and Howard.

Van Nest: As far as you know, was your Grandfather Downey a wealthy man?

Orrick: Not particularly. He was, however, quite well off, and his house was rather elaborate.

Van Nest: His home was in Berkeley on the family property there?

Orrick: Yes. And then, as I say, he gave the corner of College and Forest to my mother and dad. He gave the corner of Piedmont and Forest to his son, George, and he gave the corner on Garber and Piedmont to my Aunt Jean and her husband and my uncle, Hugh Goodfellow.

So, he had all his children literally surrounding him. And in the middle of all that he had some small orchards, apricots, apples, peach, cherry trees, and then a croquet court, I remember, which was later turned into a tennis court.

Van Nest: Did Andrew Downey have any interest in local politics or civic affairs?

Orrick: None that I know of.

Van Nest: What do you know about your grandmother, Sarah Wright?

Orrick: Absolutely nothing other than the fact that she produced three beautiful, strong-minded ladies, mother, Aunt Jean and Aunt Lil, and a fine son, my uncle, George Downey.

Van Nest: Let's talk a little about your mother, Mary Downey. Do you know what sort of upbringing she had?

Orrick: Yes. She had a very happy childhood in Berkeley, being brought up on the place. She had a horse of her own that she rode, and she rode with a number of her girl friends. She went to Berkeley High School, and then she went to the University of California. At the University, she became a member of the sorority Kappa Kappa Gamma and she was very proud of that sorority. She went to their initiations even after she graduated, I remember. After I was born and after my brother Downey was born, she took some courses at Cal and renewed her acquaintances with her sister Kappas.

Van Nest: How did she happen to meet your dad?

Orrick: She met Dad at a house party in the area of Mount Shasta, which was quite a resort then, and is today.

Van Nest: Did your parents meet after your mother graduated from the university?

Orrick: Yes. Dad was in the class of 1901, and she was in the class of 1908.

Van Nest: When did they marry?

Orrick: They married March 14th, 1914.

Van Nest: Where were they married?

Orrick: In Berkeley, in a Presbyterian church.

Van Nest: Was your mother, in the years you were growing up, active in civic and community affairs?

Orrick: Yes, she always was. In Berkeley, where we lived the first eight of my years, she taught Sunday school and was active in the Children's Hospital of the East Bay and other organizations. I don't know them by name, but I remember she had several, which she continued in San Francisco.

Van Nest: Let me ask you about the Century Club. Was that one of the activities she was involved in?

Orrick: Yes. That was in San Francisco.

Van Nest: What was that?

Orrick: That was and is a gathering place for ladies to have tea parties and, more importantly, listen to lecturers once a week. Mother was president of that. She was president of about everything she ever went into.

Van Nest: What about the Francesca Club? Was that also a San Francisco activity of hers?

Orrick: Yes. That was and is today an excellent club of which she was president. My wife Marion belonged to it for awhile.

Van Nest: Is it a civic affairs organization?

Orrick: It's primarily a social organization. Her activities in civic affairs included being on the Board of Directors of Edgewood, which was an orphanage then. It's still going now, but now it handles only

severely disturbed children. She was president of Edgewood. And she was president of the Episcopal Old Ladies' Home. That was a civic job. And then she was a member of an organization which euphemistically, then and now, might be called a right wing political organization.

Van Nest: What was that?

Orrick: It was called Pro America. I don't think they use the name Pro America any more.

Van Nest: Was your mother active in politics?

Orrick: No. She just attended some of the meetings down there.

Van Nest: She was a Republican, I take it?

Orrick: Yes, she was.

Van Nest: Along with your Dad?

Orrick: Yes.

Van Nest: How did she get involved with the Pro America organization and what was it?

Orrick: It was an organization dedicated to promoting the welfare of the Republican party and particularly, as it seemed to me then and now, the right wing of the Republican party. And she became a member because several of her good friends persuaded her to join. She had one, if not two, bridge clubs, and she knew many, many people in this city. And I think it was one of them that suggested it to her.

Van Nest: Were your mother's civic and political activities -- and I guess the political activities were limited ones -- things that played an important part in her life, that she shared with you and Downey as you were growing up?

Orrick: No. It played an important part in her life, but we didn't share in

it. We were busy going to school and going around on weekends, and so we had no part in that.

Van Nest: Were there aspects, Judge Orrick, of your mother's character that you think contributed to your later interest in community service and public service? Did she attempt to steer you in that direction?

Orrick: Oh, no. Quite the contrary. She thought politics was a "dirty business" and she didn't want to see her boys in politics. She reiterated that many, many, many times. So, she didn't influence me one way or the other. I didn't get into politics just to be a nasty kid, either.

Van Nest: Did she have aspirations for you in particular?

Orrick: Yes, she was very anxious that my brother Downey and I become lawyers and go into Dad's firm. She didn't know a great deal about the practice of the law, but she did know it was a very good firm and a high class firm then, as it is under the changed conditions today. That was always a hope of hers.

And it came true, to a limited extent. I went into Dad's office just before the War. I was there for about a month or two. Then, after four and a half years in the Army, I came back and was in the office.

Van Nest: In later years, as you became involved in politics, did your mother object or attempt to counsel you otherwise?

Orrick: No. We discussed politics at the Sunday dinner table, sometimes rather heatedly, particularly when my Uncle Oliver was there, who was a rock-ribbed Republican. My father enjoyed the controversy. He wouldn't enter into it. He was sort of a moderator. If things got slow, he would make a provocative statement and my brother and I always rose to the bait, and very often Uncle Ollie did.

I remember one time Uncle Ollie got very much upset, and he said to Dad, "Bill, you are a damned fool to send those kids to those fancy colleges in the East where they pick up all these crazy ideas."

And Dad said, "Ollie, don't use that kind of language in this house."

Then Uncle Ollie said, "I will say anything I want."

And Dad said, "You leave the house."

Uncle Ollie got up and put down his napkin and, as he went out the door, he said, "Like Voltaire, I can say anything I want. And I don't like being thrown out." Uncle Ollie was the younger brother.

Van Nest: He was your Dad's brother?

Orrick: Yes, and they were very close.

Van Nest: Was there ever a time after you became active in politics that your mother or your father expressed concern about it, or attempted to persuade you otherwise?

Orrick: No. Well, Mother always wanted me out of it. Dad did not think it was a good way to make a living, and he encouraged me to go to law school and not make politics my profession. And in the depths of the Depression, when I went to Hotchkiss School in the fall of 1933, Dad wrote me many letters on the subject of the Roosevelt-Hoover campaign in which he stated, "I think it wise not to change horses in the middle of the stream." The import of his argument was that Mr. Hoover had had a great deal of experience in these public activities going back to World War I and Belgium, when he administered that gigantic food program, and also as President of the United States; whereas, Governor Roosevelt had had very little experience, limited to being Governor of New York and an Assistant Secretary of the Navy. No less a commentator than Walter Lipmann considered Governor Roosevelt a light-weight not qualified to serve as President of the United States.

And he said, "You should weigh that in the balance and come out favoring Mr. Hoover." And I weighed that in the balance, and I came out favoring Mr. Roosevelt. But I couldn't vote then.

B. The Orrick Family

Van Nest: We are getting a little ahead of ourselves. Let's go back and talk about your family on the other side. What can you tell us about your father's side of the family, where they came from, and what kind of people they were?

Orrick: Dad's family came from Baltimore. We can trace his lineage, now my lineage, all the way back to James Orrick, who in 1665 and later in 1683 obtained from the United States patents totalling 250 acres in Baltimore County. We have tried in vain to get back of that, at least to see how he came across the ocean, but we can't tell whether he was a sailor or a runaway or what he was. All we know about him was that he did get those patents.

Van Nest: Have you been able to learn anything about the origins of the Orrick family in Scotland?

Orrick: Surprising to state, I have. The name of the Orrick family is said to have originated from the rock upon that part of the Fife coast where the estate lies. The family was an ancient and honorable one, and Sir Simon de Orrok's name is inscribed on the Ragman's Roll, which, for antiquity, is the Scotch rival of the British Domesday Book. The Ragman's Roll originally meant the roll of Ragimund, a legate of Scotland who compelled all the clergy to give a true account of their benefices, that they might be taxed at Rome accordingly.

In those early days, they owned a great deal of property in Scotland. Going back to the 13th century, they lived in a maritime county on the east coast of Scotland. In the County of Fife lay the great landed estate called Orrok, belonging to the family of the same name. This estate was near Burntisland, a seaport town, which was selected by the Roman general, Agricola, as a landing place for his forces when he explored this part of the coast of Britain.

Van Nest: Can you tell anything about the role of the family in the succeeding

centuries in Scotland?

Orrick: I think so. The Lairds of Orrick were vassals of the Stewarts of Rosyth, but their charters were destroyed by David Boswell. The name appears in Scottish history books throughout the years. For example, it appears in the book of Scottish arms 1370 - 1678, as well as in Nisbet's Heraldry. The Orricks of that time bore armorial bearings which had a sable on a chevron between three mullets.

One of the main estates of the Laird of Orrick was Dunfermline, which was visited by King Edward the first of England and was a favorite place of James the Sixth before he went to England to become James the First.

Suffice it to say, down through the years, the Orricks played important roles in their respective communities. However, there was a good deal of fighting in Scotland, and the political troubles of the time and religious disquiet everywhere were, doubtless, the reasons why members of the Orrick family sought relief in the tranquility of the Colony of Maryland.

Van Nest: And it was James Orrick who first came to Maryland?

Orrick: Yes.

Van Nest: What, if anything, do you know of him?

Orrick: Well, a patent was issued to him November 30, 1665, for 100 acres on the bay side called Orwick. And, again, on May 1st, 1683, a patent was issued him for 150 acres of land called Orwick's Ferry located on the north side of the Severn River.

Van Nest: What did James Orrick do for a living?

Orrick: I really don't know. I suppose one could speculate that a person owning 250 acres might be engaged in farming, but that is simply a guess, and I don't know what he did.

Van Nest: How did the Orrick family make its way to California?

Orrick: My grandfather, Oliver S. Orrick married Mary Francis Scott. Mary Francis Scott had three brothers, Henry T. Scott, Irving M. Scott, and I believe John Scott.

Van Nest: Who were the Scotts, and where were they from?

Orrick: The Reverend John Scott was a quasi-clergyman living in a village near Baltimore. He and his wife had three children, Irving M., Henry T., and my grandmother, Mary Francis Scott. Irving M. was the first to come to California in the 1850s. He went into the iron foundry business and sent for his brother Henry before the Civil War. The Scott brothers, in partnership with a Mr. Prescott, established their own foundry and were eventually able to buy the much larger Union Iron Works, which was later taken over by Bethlehem Steel. The battleship USS Oregon was built at the Iron Works during the Spanish-American War. She was ordered to join the fleet in Havana. She, of course, had to go around Cape Horn, and it took her a number of weeks to join the fleet. It is said that the length of the voyage of the USS Oregon sparked the negotiations of the United States to finish the construction of the Panama Canal that had been partially built by the French.

Van Nest: Had your grandfather met Mary Francis Scott back in Maryland, or did they meet out here?

Orrick: They met in Maryland. Mary Francis Scott's other brother, who was in California, Henry T. Scott, was president of the telephone company and also one of the founders of the Burlingame Club. He and Irving persuaded my grandmother, their sister, to come to California and make the "Orrick fortune."

Mary Francis Scott was a very strong-minded lady, and she was the prime mover in getting the family to California.

Once in California, my grandfather founded the California Paint Company. They lived in a large house on Vernon Street in Oakland next to Senator Perkins' house.

Van Nest: Did you know your grandmother, Mary Francis Scott?

Orrick: Yes, I did.

Van Nest: What can you remember about her?

Orrick: Well, I remember that she was small, that she wore black dresses continuously, as I guess many ladies did in those days, with lace collars. She was not afraid to speak her mind or to pick favorites. Every Sunday lunch she had all of her family there, including us kids. The lunch was long and heavy, and we would go down and torment the Chinese cook. He only had one eye, and we would taunt him about his eye until he picked up a meat cleaver and started after us. Grandmother, needless to say, did not approve of this, and she soundly lectured us.

Van Nest: Was it apparent to you then that she was from a wealthy and a prominent family?

Orrick: I can't say then because I had no idea that anybody lived any differently than we lived. We just never saw them. But, in reviewing the family history in later years, it appears that the Orrick family was prominent in Oakland. My grandfather was a leader of the Methodist Church, and all his children had to go to church every Sunday, and then grandfather would bring back the preacher for lunch and they would hear the same sermon all over again.

Van Nest: Was the Scott family somewhat celebrated back home in Maryland?

Orrick: Yes. In fact, on their 50th wedding anniversary the great American poet John Greenleaf Whittier composed a poem in celebration of that important event. I should also say that the Scotts traced their lineage back to 1291 when John Scott II obtained a deed from Robert Scott of Chiselhurst. Irving Scott commissioned a research person to trace the Scott lines and important records of the Chartularies monastic records as well as subsequent roles and the records of the Court of the Exchequer. The first Scott to come to America was Abraham Scott, who came to a Philadelphia meeting of the Quakers bearing a letter of recommendation from the Quakers abroad dated June 22, 1722.

Van Nest: Judge Orrick, were your grandparents, Oliver Orrick or Mary Francis Scott, active in civic or political affairs in the East Bay?

Orrick: Not to my knowledge.

Van Nest: Do you recall that being a topic of conversation with them?

Orrick: No.

Van Nest: When was your Dad born?

Orrick: December 5, 1878.

Van Nest: What can you tell us about his childhood?

Orrick: He grew up on the big place in Oakland, and he was one of seven children. Uncle Murray was the oldest and Dad was second oldest. Some of the others died early. Uncle Murray was the leader of the group. He would devise all manner of tricks and games, which upset his mother, and also he would make my father play in these games.

Dad didn't have any great interest in it. He liked to read. He would get his book, some very exciting book like Ivanhoe or any other masterpiece by Sir Walter Scott, and find a place in the house where nobody could find him, and read. He also took violin lessons. He would get on his horse and put his violin under one arm and ride the horse down to the violin teacher's house. The house was located in east Oakland, which wasn't too much different from what it is today. And he said that it used to hurt his feelings when little kids would pelt him with rocks which would hurt his violin case. He said the biggest pain he felt was listening to the rattle of the rocks off the violin case.

I don't want to give you the impression that the family was a musical family, because it wasn't. However, one or two of the other boys took music lessons. Uncle Murray took piano lessons. They would practice together at great length, but they only learned one song, and that song was "The Shepherd Boy."

Van Nest: How much education did your father have?

Orrick: He went to the University of California when he graduated from high school. Then he went to the law school, which at that time was in San Francisco -- it was Hastings Law School. Boalt Hall didn't come into existence until 1912, and Dad graduated from law school in 1903.

C. Family Roots in the Law

Van Nest: Was your father the first lawyer on either side of the family?

Orrick: Yes.

Van Nest: He became a prominent San Francisco lawyer, didn't he?

Orrick: Yes, he did.

Van Nest: What do you know now about your father's beginnings in law? Where did he start practice and how did he develop the firm that is now the Orrick firm?

Orrick: He started to practice in San Francisco with Jesse Steinhart, who was a friend and a classmate and who later formed his own very prominent firm. They began by defending thieves, and Mr. Steinhardt couldn't stand it. He was concerned about what would happen to him when the thief got out of jail. So, that left my father a sole practitioner. About that time, the city was leveled by the fire, and Dad found a job working with Mr. A. A. Moore.

Van Nest: Let's stop there for a minute, Judge Orrick. Did the great fire of 1906 destroy a lot of either the Orrick or the Downey property that existed at that time?

Orrick: It destroyed a great deal of the Downey property. The Orricks were

then living in Oakland, so they weren't bothered.

The insurance companies were having a very difficult time, and there was a great deal of litigation, as you can imagine, after the ravages of that fire. Dad became an expert in the insurance law, and he was asked to go to Sacramento and codify it, which he did. He spent about a year and a half up there. And the Insurance Code today is his handiwork for the most part.

He then came back to San Francisco and worked under Mr. A. A. Moore.

Van Nest: Who was Mr. Moore?

Orrick: Mr. Moore was a prominent lawyer. He had a son called Stanley Moore, who was a good friend of my father's and who was a very well-known litigator. About that time, there was a firm called Goodfellow and Eells. Dad and Stanley Moore joined the firm, and it became Goodfellow, Eells, Moore & Orrick.

They had an interesting practice. They represented several persons who were charged with corrupt practices in the city government. This was in the heyday of Abe Ruef, who ran or tried to run everything in San Francisco. He was unscrupulous in his practice, and finally he was indicted and sent to San Quentin where he served, I believe, eleven years. But these graft prosecutions took up most of the time of the courts.

Van Nest: And Mr. Moore was defending many of these defendants?

Orrick: Mr. Moore was, and his son, Stanley. A prominent trial lawyer from New York called Francis J. Heaney was brought in as a special counsel to prosecute. The firm, Goodfellow, Eells, Moore & Orrick, found itself trying to defend a good many of the persons who were indicted during the graft prosecution. My father's activities in that litigation were devoted to research.

Van Nest: Is it accurate to say that your father's practice started off as a criminal practice?

Orrick: No. That was a very small part of it. The only criminal work that I ever saw him do or heard about that he did was this joint venture he had with Jesse Steinhart.

Van Nest: And the Reuf prosecutions as well?

Orrick: Yes. And the Reuf prosecutions, the graft prosecutions.

Van Nest: What was the major part of the work that he did in his early years at the Goodfellow firm?

Orrick: He helped out with everything. He could try cases. He was a good advocate. He was good at business law. And, most importantly perhaps, he was a first rate bond lawyer.

Van Nest: How did he happen to get into that area?

Orrick: Mr. Charles P. Eells got into it, and Mr. Eells would come to work every morning a little early, go through all the office mail to determine whether there were any letters from county attorneys or city attorneys or any person having anything to do with bond work that had to be done, and he would look at those and carefully pull out the ones that wanted advice on municipal bonds or wanted an opinion, or whatever, and he didn't let anybody else do that work. When he finished that work, he would spend the rest of the day translating Greek. He did need some help, and that is how my father got into it.

The firm claims beginnings going back to 1863, when Mr. John J. Jarboe became general counsel for the old German Savings & Loan Society. He then formed a firm called Jarboe, Harrison & Goodfellow. The bond business steadily grew and, eventually, it was my father's main occupation and later it was George Herrington's main activity in the firm.

Van Nest: Did your father and the firm he was involved with, the Goodfellow & Moore firm, have some involvement in a high profile case during the First World War?

Orrick: Yes. And this is one of the most interesting cases in our Historical

Society of the Court. In 1916 Mr. Stanley Moore was engaged to represent the leader of some East Indians who had been solicited by Germans to return to India and fight the British. German warships were plying up and down the California coast and occasionally slipping one of these recruiters off under the cover of night to go up to the San Joaquin Valley where these Indians were harvesting rice.

The United States Secret Service managed to capture the ringleader and bring him to San Francisco for trial. This was Stanley Moore's client. The trial attracted a great deal of attention. The courtroom was filled to overflowing every day.

There was an informant, as there often is in these kinds of cases. The informant was on the witness stand 15 feet from the place at the counsel table where Stanley Moore's client sat. As the informant was testifying, Mr. Moore's client pulled a pistol from his coat and shot him at almost point blank range.

At that, United States Marshal Holohan, later warden at San Quentin, who was standing at the back of the courtroom, fired over the heads of all those people, including Stanley Moore, and hit this Indian on his left ear.

Van Nest: The defendant?

Orrick: Yes, the defendant. There was a big uproar. Judge Van Fleet was on the bench, and he rapped for order and said, "There will be a ten-minute recess and, Mr. Marshal, clean this stuff up." So, ten minutes later the court took up again.

Van Nest: And I bet the trial closed fairly promptly?

Orrick: Yes. That is the most dramatic courtroom story I ever heard.

Van Nest: What other activities did your father get involved in down through the years in building the Orrick firm?

Orrick: He was a director of a number of firms: California Pacific Title Insurance Company, Fireman's Fund Insurance Company,

Crown-Zellerbach Corporation, the San Francisco Bank, Del Monte Properties Company, PG&E, W. R. Grace & Company. And I am sure I have left out quite a number.

So, as you can see, just attending those directors meetings was a full-time job. He turned most of the bond work over to George Herrington, and he found time to deal with those companies and many individual clients.

Van Nest: As you were growing up, Judge Orrick, how much time did your father spend practicing law?

Orrick: He would be at his desk at 5:30 in the morning, and he would come home about 7:00 at night. He worked very hard at that. A lifesaver for him was when he and Mother built a house down in Pebble Beach. Most of the people in the firm were younger than he was, and every Friday afternoon they would be filling his briefcase -- the old Southern Pacific train called the Del Monte left at 3:00, and he would leave the office at a quarter to 3:00 with his briefcases. The younger guys in the office would be out in the lobby saying, "Thank Heavens. Now, fellows, let's have a little fun around this place."

Van Nest: Was he traveling a lot in his practice? Was he gone from home overnight or on weekends?

Orrick: Not very much. Fortunately, in those days -- I wish we had them now -- they had something called railroad trains. So, instead of flying to Washington on the red-eye, you took the Overland Limited, which took four days and three nights to Chicago, transferred at Chicago to the Broadway Limited, and arrived in New York the next morning properly rested. It was by no means as hectic then.

Van Nest: Did he travel to the East and the Midwest a lot?

Orrick: Not a great deal. He represented the Sierra Pacific Power Company out here. For years, the Sierra Pacific got their power from the Truckee River, which runs out of Lake Tahoe, and there was litigation that went on there for 30 years. Dad was the only

lawyer who was in it from beginning to end. He devised a decree pursuant to which nobody could lower the level of Lake Tahoe without a written order from the United States District Court for the Northern District of California.

I remember one of my first jobs was to get such an order signed by Louis Goodman, Chief Judge of the District. He could never understand why it was necessary to get a written order, but he never went into it either, because it didn't take much time. He just signed it.

Van Nest: Was your father active in politics, community affairs, or Bar activities in addition to his busy practice?

Orrick: No, not at all. It was all practice. I should say there was some pro bono work. For example, he was counsel for the Protestant Episcopal Old Ladies' Home. He was chancellor for a while of the Diocese of California and attended all the meetings of the trustees and of the chapter, as they called it then. Down in Pebble Beach he was, for thirteen years, president of the Cypress Point Club. That was hardly pro bono, although he didn't get any fee from it. That is about all I can remember.

Van Nest: Were his political views conservative for that period of time?

Orrick: I would say that he was a Lewis Powell moderate. That is the buzz word today for a good justice, and that is about where he was. I would argue every kind of a question with him. It was always with the understanding that he thought everything over and always picked the best man -- Republican or Democrat -- and it was his effort to get me to do the same thing.

One summer some of my friends came out to go on a pack trip: Jack Bingham, who was later a Congressman, Potter Stewart, and some others. We spent a couple of nights before the trip in our home at Pebble Beach and also up in the city. We all enjoyed political argument. I told them, "My Dad is a moderate. He calls them as he sees them."

So, finally, I said, "Dad, I understand this very sensible

position, but did you ever at any time vote for a person who was not a Republican?"

And he said, "No, Bill, I haven't. I voted Republican all my life."

Van Nest: He called the Republicans as he saw them?

Orrick: That's right. He was very good on the positions.

Van Nest: What was it about your father's character that had a lasting impact on you?

Orrick: I admired him and loved him extravagantly, and he lives with me today. Professionally, he had no peers. He was thorough in his research. For example, he and a young lawyer in his office scanned all three hundred volumes then existing of California Reports because he didn't trust the index and he didn't want to miss any point in the brief that he was filing on behalf of the underwriters in the Golden Gate Bridge case, which he won. He wrote very well, and he was equally at home in the trial courts as well as in the appellate courts.

But more importantly, he was a man of impeccable character. He was kind, gentle, patient and compassionate. His probity and integrity were appreciated by everyone who came into contact with him. He had the courage of his convictions, and he was forthcoming in stating them.

I had the great pleasure of serving with him as a director of the Del Monte Properties Company. The chief executive officer was Mr. Samuel F. B. Morse, who liked yes-men about him. But that never stopped my father from taking and explaining an appropriate point of view.

This calls to mind a conversation I had with [Attorney General Robert F.] Bob Kennedy on this subject. I told Bob that I was having great difficulty in completing a particular project, and, in passing, I told him, "My father told me never to give up, and, if I wanted to go through a brick wall or some such thing, I should just

try and try and try, and, eventually, I would be successful." Bob said to me that his father's advice to him, in similar circumstances, was to go around the wall rather than to try and push through it.

Both Downey and I had a superb one-on-one relationship with him. When we were away at school, we would get thick letters with important quotations or some views of his own. I preferred Mother's letters because she gave us news about what was going on at the old homestead. But Dad wanted us to keep certain things in mind. He had a number of plaques containing important inscriptions, such as Thomas Jefferson's inscription at the University of Virginia: "Enter ye by this gateway and seek the way of honor, the light of truth and the will to work for man." By means of these plaques, Dad urged us to follow Polonius' advice to Laertes, Lycurgus' speech in 331 B.C. to Theocrates, and other wisdom from the likes of Solomon, Socrates and Lincoln.

Van Nest: We have talked a little bit about your family origins. Where and when were you born?

Orrick: I was born in San Francisco on October 10, 1915.

Van Nest: How many children were in the family?

Orrick: Just two. My brother Downey was born two years later. And at that time, our family lived in Berkeley.

D. Early Education

Van Nest: Can you tell us where you lived and how your family lived up until the time you left home for school?

Orrick: Very briefly, the years from one to eight, I spent in Berkeley. We had that large block, which we talked about earlier, to roam around in, and we could have all kinds of games from hide-and-go-seek to

football. There were big lawns on which we could play football, at our peril, lest we get in trouble with the Japanese gardener.

Van Nest: This was all part of the land that Andrew Downey owned?

Orrick: Yes. During our years there, I went first to the Bentley School, which I was surprised to hear the other day is still in existence. It's a private school within a couple blocks of home. Then, in the third grade, I was sent to Emerson School, which was just a block away, which was a public school.

To show you what kind of a, perhaps, sissy life I led, on the first day that I walked into the yard at Emerson School, some little rough-neck came up, and I hadn't said or done anything. Nonetheless, he punched me in the nose, and my nose began to bleed. Nobody had ever taught me how to fight. We didn't have boxing or wrestling or karate there, so I flailed away at him.

Then the principal came out, and he made a judgment that I was the guilty one. He ordered me into his office, and he gave me a dressing down I have never forgotten. And so, it was not a very auspicious day for me when I walked into Miss Wade's classroom late, because the principal had been giving me a lecture.

Van Nest: Were you perceived by the group there as a rich kid that was coming into public school from a private school?

Orrick: Not so much that. A rich kid, yes, whose family owned the whole block of land across the street and wouldn't let them come in and play.

Van Nest: Where did you go on from Emerson?

Orrick: When we moved to San Francisco, which was in 1924, I went to the Potter School. That was also a private school. We played football there, I recollect, and sometime later Mr. Potter had to sell it. And by way of showing you the scholastic standing of the school, Mr. Potter's next job was as a headwaiter at a restaurant on California Street.

Van Nest: You told one of your classmates at Yale that Potter was a school for rich, spoiled kids. Was that what you thought then or what you think now?

Orrick: Well, that is an overstatement. Anybody could go there who was rich. There wasn't any question about there being a scholarship or anything like that. And it went from the first grade up through high school. But not all of them were spoiled.

Van Nest: Was there a perception in those days that there was a great distinction between the quality of education you got in the public and the private schools?

Orrick: Not especially. Our teams played in the San Francisco Athletic Leagues, baseball and football and basketball. They were the high school people. We didn't have a league as kids. But they would be up against some pretty rough-tough fellows from Poly or Galileo. And Lowell had good teams in those days, I remember.

Van Nest: In later years as a judge, you have had a lot to do with schools and school systems, particularly here in San Francisco. I think people would be interested to know: Was there a lot of deliberation in your family back then as to whether to send Bill Orrick to private or public school?

Orrick: As far as I was concerned, it was a matter of going where my father sent me. I never had any choice on that, nor did I have any interest in seeing if there were other schools I would like to go to.

The times have changed. I remember when we took our son Bill to look at schools. He had a good SAT score, so we took him to the East and took him down to Thacher School, where I went. He made up his own mind where he wanted to go. I wanted him to go to Thacher, but he couldn't see it. When we visited schools, Marion and I would make him state his reasons first, why he liked or disliked the school. We took him to Andover and Hotchkiss and Deerfield, as well as Midland, Cate, Milton, and Groton. He picked Groton, so that is where we sent him.

Van Nest: Where did you go after grade school?

Orrick: Thacher.

Van Nest: Where was that?

Orrick: It is in Ojai, California.

Van Nest: What kind of place was Thacher School, and what sort of an education did you get there?

Orrick: The Thacher School was geographically located at the head of the beautiful Ojai Valley near the mountains. Mr. Sherman Thacher started the school in the same year that Mr. Taft started the Taft School. They were close friends and roommates, I believe, in the class of '68 at Yale. They intended to and did create very simple schools. And Mr. Thacher's was a very simple school.

At Thacher each kid had his own horse. You had to take care of your horse, clean it, ride it, clean the stables and so on. We had a good curriculum. We didn't play any football, because there was no place to play it, but our sports included baseball, tennis, track, and soccer.

If you liked to go on a camping trip, you could do that on weekends. You could get up your own group of five or six and a teacher, and we were taught how to saddle a mule, pack it using a diamond hitch, and wander over those mountains. And that was very instructive. We did reasonably well in the college board examinations. Then, most of the class went to Yale. Later on, most of them went to Stanford.

Van Nest: Thacher was perceived at that time as a sort of a stepping stone into Yale?

Orrick: Yes.

Van Nest: Were you directed to Yale even at that age? Was that something that you or your parents aspired to?

Orrick: No. I always thought I wanted to go to the University of California, because when we lived there in Berkeley, and

afterwards, I don't think I ever missed a game up at the California Memorial Stadium. And I was a very enthusiastic California rooter.

The reason I went to Hotchkiss was --

Van Nest: Let's talk about that. Thacher was a high school and you went on from there to Hotchkiss?

Orrick: Yes.

Van Nest: What sort of place was that and where was it?

Orrick: Hotchkiss is in Lakeville, Connecticut. It was as different from Thacher as night and day. The buildings were beautiful Georgian style brick buildings. The curriculum was varied and difficult. We attended chapel every day and twice on Sunday. We took turns waiting on tables. The pressure was on all the time. I went out for baseball. And there was track, tennis, hockey and golf. They had a nine-hole golf course there. And then they had a glee club and debate team. I was on the debating team, and I was on the glee club.

Van Nest: Was it at Hotchkiss that you first became interested in politics?

Orrick: Yes. It really was. The way I got there, which you asked first, was: At Thacher, in the senior year, there was a dormitory master who had come out from Milton. He wanted me to go to Milton, and he talked to me a great deal about that.

I got the idea that I would go to Hotchkiss, because a very good friend of mine, Pete Pond, had gone the year before, and he was enthusiastic about it. And the reason I went was that I was only sixteen when I graduated from high school, and it was generally thought that another year would be helpful, which it was, because it picked me up in my studies. The school was tougher.

Van Nest: How did you get involved or interested in politics at Hotchkiss?

Orrick: This was in the depths of the Depression. As one left New York City on the train up to Millerton, where we got off to go up to

Lakeville, you went through that then-and-now terrible slum. Guys were standing around with apples. "How about an apple, kid, ten cents."

There was a little time between chapel and the first class, and I used to go into the library and look at the magazines. I came across The Nation, which was there, so I followed the difficulties of the country through that magazine and, I guess, Time Magazine.

Van Nest: Did you have a chance to visit Washington, D.C., during your year at Hotchkiss?

Orrick: Yes. One Easter -- Well, the only Easter I was there, with a couple of other fellows and our debating coach, a fellow called Harry Davis. We went down to Washington and took the usual tour through the Capitol. I don't think we got to the White House. But in a couple of days, we went through the Capitol and the Lincoln Memorial and climbed to the top of the Washington Monument, among other things. That was very thrilling to me. We got there, I remember, at night, and the Capitol was lit up, and it was really a great sight.

Van Nest: Was it at Hotchkiss that you first began exchanging correspondence with your dad on topics of the day and politics and that sort of thing?

Orrick: Yes.

Van Nest: Did you keep up an active correspondence with him while you were at school?

Orrick: It was pretty active. I didn't have that much time to myself. At Hotchkiss, they kept you busy all the time.

Van Nest: You mentioned a moment ago the Depression. Was the Great Depression something that had a lasting impact on you, either while you were at Hotchkiss or later?

Orrick: Quite a lot, because in the growing-up period, through which we have just come, we didn't see any "poor people." We didn't see

people in rags. We didn't see a man in tattered overcoats selling apples, literally. We just didn't see it. When it came upon me, as it did for me when I first went to New York, it made a lasting impression.

I make the same judgments today. I could never understand, and I don't now understand, why, with the enormous surpluses of wheat and other grains in this country and others, ten of thousands of black Africans are starving. As [President John F.] Jack Kennedy would say, "Well, life never is fair." That may be, but it doesn't solve that particular problem. So, I was interested in reading about efforts being made along that line, and particularly with the New Deal. That was very exciting then.

Van Nest: Was the New Deal something that first came to your attention while you were at Hotchkiss?

Orrick: Yes.

Van Nest: What was it about the New Deal that caught your attention?

Orrick: Well, obviously, strong efforts were being made by the Administration to get people out of the horrible depression. Beginning, for example, with the NRA [National Recovery Administration]. We have talked about price fixing. That was the whole purpose of NRA. The idea was to fix prices in various industries and eliminate price competition. The CCC, Civilian Conservation Corps, put men to work. The WPA, Works Progress Administration, put people to work. And I thought that was a very good thing. I thought then, and it's even more true now, that the rich are getting richer, and the poor are getting poorer, and the middle class is just about the same. In this, the most undertaxed country in the world, it is absurd.

II. COLLEGE YEARS AND THE WAR

A. At Yale University

Van Nest: You went on to college at Yale?

Orrick: Yes.

Van Nest: What was it that attracted you to going to Yale?

Orrick: There again, my good friend Pond preceded me. And Hotchkiss graduates primarily went on to Yale, Harvard and Princeton. But in my class, there were more Yale people. I liked the campus.

Van Nest: What sort of experience did you have at Yale?

Orrick: A great experience. I jumped into things that interested me, and my main experience at Yale can be told through my activities on the Yale Daily News. Although I rowed in the fall on a 150-pound crew and went out for the Dramat on the business side and tried to get in the glee club, my main interest was in the News.

The News competition started for me in the winter. They had one competition in the fall and one in the winter and one in the spring.

Van Nest: When you started at Yale, was law something that was a definite desire, a career goal in your mind?

Orrick: No. It was certainly in my mind, and I certainly thought I would go to law school. But I did not shape my course with that in mind. There weren't many elective courses at that time, and I took the courses that they served up and worked on them the best way that I could.

Van Nest: How did you get involved or interested in journalism?

Orrick: Well, I read the News every day, and I thought that I could find out much more about Yale if I was being a "heeler," as they called them, for the News. So, that was my main activity throughout my college career. I entered the winter competition, which was the toughest because there were more competitors -- about thirty. They were going to take four or five, and I badly wanted to be one of them. So, I was up night and day trying to get on the News, and my studies suffered in the meantime.

Van Nest: How did one go about getting on the News back then?

Orrick: You had to get points, which were awarded for stories that you covered regularly. If the managing editor told you to go up to the gym and cover the Yale-Ohio Wesleyan basketball game, that is what you did. You went out and came back and wrote it up, and you got so many points for that. If you brought in an unassigned story, and it was printed, you got so many points for that. You got more points than the regular work. And if you brought in some advertising, you got points. So, I was sweating them all. I got enough points and was elected to the board as a result of that.

Van Nest: Did you have occasion to go down to Washington to get an unassigned story in pursuit of a board position?

Orrick: Yes, I did. I wanted to get these unassigned points, and I saw how easy it was to get them if you interviewed somebody who was important and then wrote it up. A lot of the heelers would grab lecturers that came to Yale, and I thought I would do a lot better by myself down in Washington.

So, I started in with Supreme Court Justices, and I interviewed Justice [Louis D.] Brandeis. I interviewed Chief Justice

[Charles Evans] Hughes [Jr.]. In those days the justices had their chambers, so to speak, in their respective houses, and they only went up to the old Senate building for hearings. And everything that was going on, as far as they were concerned, was down in their house. There was little of so-called collegiality.

So, when I went to see Chief Justice Hughes, I had made a date to meet him at noon at his house, and it was on a Sunday. I went up to the door, trembling, and about five minutes to 12:00, a butler came and let me in. He took me into the Chief Justice's library, and I sat there waiting.

Promptly on the stroke of 12:00, the Chief Justice came in with his full beard, and he was wearing a morning coat and his striped trousers.

I said, "Mr. Chief Justice, I am Bill Orrick. I am heeling Yale News, and I would like to have an interview."

He said, "I don't give interviews."

So, my face fell down to here.

But he said, "Sit over there, and we will discuss this. Do you want to be a lawyer?"

I said, "Yes, sir."

He said, "Well, my strongest advice to you is: Do not engage in this silly business of going out for a newspaper. You will have only one chance in your life to read, and you go into that beautiful Yale library, into what they call the Linonia Brothers room, and you read every free moment. You will be grateful for that when you get to be my age, because you won't have a chance to read again."

I didn't follow his advice, and he was pretty near correct. That was something I will never forget.

Van Nest: How was it that the Chief Justice of the Supreme Court was available to talk on Sunday to a college kid from Yale?

Orrick: I think I had an introduction. I can't remember, but that might be it. Dad knew the Attorney General of Colorado, and the Colorado Attorney General might have called Hughes' chambers -- I just don't remember. With Brandeis, I had no qualms about calling him on the phone for an appointment.

Van Nest: He was willing to see you just on a phone call?

Orrick: Yes. And he invited me to come to tea, which I did. He lived with his sister. And I forget what wisdom I learned, but I had something I could put in the News.

Van Nest: Did you interview some political figures while you were in Washington?

Orrick: Yes. I saw James A. Farley, the epitome of the successful politician, who, after running the campaign, became the Postmaster.

Van Nest: And he ran the Roosevelts' campaigns?

Orrick: Only one of them. He signed his name in green ink, I remember. He was friendly and jovial and a thorough delight.

I remember, when I was at the Democratic convention in Chicago in 1956, I was walking across the street with Adlai Stevenson, and Mr. Farley was going the other way, and he said, "Hello, Adlai."

Adlai raised his hand, and he turned to me, and he said, "You know, I never forget a face."

Every politician in the nation knew Farley. I tried to get an interview with the Secretary of War [George H.] Dern.

Van Nest: Was he tougher to get to?

Orrick: He was much tougher. And I tried to get one with [Aviator Charles] Lindberg, which didn't work. I got one out here with Joe Cronin, who was a San Francisco boy, and who was manager -- I think he was manager of the Washington Senators baseball team

then.

Van Nest: Judge Orrick, in connection with getting your points and heeling the News, did you have occasion to interview any other government luminaries of the day?

Orrick: Yes, I did. Fortuitously, I had the opportunity of interviewing President Herbert Hoover.

I was returning to New Haven after Christmas holiday. Mother and Dad had come down to see me off at the old Oakland Mole. In those days, one had to take a ferry boat over to the so-called Oakland Mole where all the trains were.

Mr. Hoover came along, and my dad knew him and introduced me to him. I asked him if I might interview him for the Yale Daily News, and he acquiesced and said to come into his drawing room after the train left Reno the next day.

Van Nest: Mr. Hoover just happened to be on the train?

Orrick: Yes.

In those days, it took the train known as the Overland Limited four days and three nights to get to Chicago, so there was a lot of time for the so-called interview. The train left San Francisco in the evening and got to Reno around 10:00 in the morning. When it left Reno, it went across the desert en route to Ogden, Utah. I called on Mr. Hoover in his drawing room. I wanted particularly to question him concerning certain New Deal legislation. The so-called New Deal was really new then, because this was January of 1934.

I started in asking him about some of the "alphabet agencies," as they were sometimes called. He answered with great knowledge, but he was bitter, very bitter, toward his successor, President [Franklin Delano] Roosevelt. He said that during his, that is, Mr. Hoover's term in office, he had made suggestions for almost every one of the agencies that were later made into law or authorized by statute, and that Franklin Roosevelt had simply copied his material.

He said that anybody who had read Walter Lippmann's columns or articles about Governor Franklin Roosevelt when he was campaigning would know that the man had no understanding of national domestic problems, let alone international problems, and that he was something of a cheat, because he copied these alphabetic agencies.

Van Nest: These were the agencies such as the CCC, the NRA, and other agencies designed to carry out the policies of the New Deal?

Orrick: That's right. Also the SEC, Securities and Exchange Commission, and the Reconstruction Finance Corporation, RFC.

Mr. Hoover said that he had, as I recollect it, task forces ready to start each one of these agencies, but he had no help whatsoever from the Congress, and that the only one of the agencies that kept its initials was the RFC, the Reconstruction Finance Corporation. And that, of course, was run by Jesse Jones from Texas and was one of the more important agencies in the Federal Government.

Other than that discussion, all that I can recollect was the impression that he made upon me as being a very bright, able, articulate man, serious and conscientious, but nonetheless a bitter man. He had, you will recall, been the Administrator of the Food Administration which was set up in Belgium immediately after World War I and which he handled very well, having received decorations from all Western European governments, and throughout his life had done nothing but public service.

As a matter of fact, just in passing, I would note that Bob Kennedy had one of his first jobs as a member of what they called the Little Hoover Commission. Bob thought very highly of Mr. Hoover.

Van Nest: What was the Little Hoover Commission?

Orrick: Well, it was an efficiency-in-government commission. Bob had gone to work for him. When you went into Bob's house on Hickory Hill in McLean, one of the first pictures that one saw, which hung on

the wall on the right-hand side as you went in, was a picture of Mr. Hoover inscribed to Bob Kennedy.

Van Nest: What was Former President Hoover doing at the time you traveled on the train with him back East?

Orrick: I think he was just working on his memoirs. He was not in university life. He was an engineer. They called him the "Great Engineer," like they call Ronald Reagan the "Great Communicator." He had the misfortune also of sending General [Douglas] MacArthur after the veterans who camped on the Mall.

Van Nest: After you earned a seat on the board, did you spend the next four years at Yale active in the Daily News?

Orrick: Yes. The most active time was the one year when I was the actual managing editor, and that went from January in junior year to January in senior year. So, I practically lived over there. It was my baby. I had to show up every day and try to get "all the news that's fit to print" about Yale. It was great fun.

Van Nest: Did you have a chance while you were in college to work professionally as a journalist, outside of the Daily News?

Orrick: Yes. One summer I wanted to work on the [San Francisco] Examiner. I called on Mr. John Francis Neylan, one of the best lawyers in San Francisco, who was a friend of mine as well as my family, and whose daughter Jane Childs was and is a close friend of mine. More importantly, he was Mr. William Randolph Hearst's lawyer and, of course, knew the publisher of the Hearst flagship, the San Francisco Examiner.

I asked him if he could help me get a job on the Examiner, and he said, "Why certainly, Bill." He leaned back and picked up the phone and called Clarence Linder, who was then the publisher, and said, "Clarence, I have got a new reporter for you. He will be in your office in fifteen minutes." He put it down and said, "That is all you want Bill?"

I said, "Thanks a lot, Mr. Neylan."

And fifteen minutes later, I was in Mr. Linder's office, who was very nice. He took me then out to the city room. The city editor was Josh Eppinger. Mr. Linder left me to the tender mercies of Josh Eppinger. He had one of those phones on a hook like the city editor in "The Front Page." He looked at me and said, "Orrick?"

I said, "Yes, sir."

He said, "Do you see that miserable, stinking, rotten, dirty little worm sitting at the last desk?"

I said, "Yes, sir."

And all the veteran reporters looked up.

He says, "There is only one person that is worse in this whole room."

I looked around for him, and he says, "It's you. You go sit next to him and do what he tells you."

I said, "Yes, sir."

Van Nest: Did you get a beat then?

Orrick: No. Well, yes. I was sort of what you might call a utility infielder. The regular beats were assigned to the older reporters. But whenever there was something that the older reporters should have reported but didn't or something way off their beat, then I would get the opportunity to go out.

On one occasion, there was a suicide on Telegraph Hill -- it was customary for the crime reporters, from the Examiner and the Chronicle and the Call Bulletin and the San Francisco News to sit around a table out at the Hall of Justice and play poker. If something happened, one guy would go out and come back and tell the other guys what happened. And then they would all get on the phone and call the rewrite man in the city room.

Josh said, "These [expletives deleted] are not going to go up on Telegraph Hill to cover a suicide." He said, "You go. And if there is somebody else there, you can come back. But you go, and if there is nobody else there, you bring the story and a picture of the dead person."

So, I went up on Telegraph Hill. A policeman was standing outside the house. The house had been sealed. I asked the officer, "Where is the stiff?"

The cop looked me over -- I don't think I was fooling him. And he said, "It's in there." So, he let me in. He said, "The body is covered with the sheet." I jerked the sheet up like that, and I put it back down. The guy had jumped down on his head, and he was a mess. There was a picture of him on the wall, which I took.

When I got back to the city room, Eppinger said, "Were any of those people there?"

And I said, "No."

He said "You write the story."

Then he said, "Did you get a picture?"

And I said "Yes."

"Good boy. That's fine."

So, I wrote the story, and he played it up. He had a picture of the dead man on the front page of the second section with my story. It turned out that the decedent had been a banker, a vice president of the Bank of America. The story was one of the most important in the bulldog edition.

Van Nest: The bulldog edition being --

Orrick: The first edition.

Van Nest: The first edition of the day?

Orrick: Yes. So, that was known as a "scoop." I had another similar experience with another guy. But I enjoyed the work very much. I covered two-alarm fires, Commonwealth Club lunches and stuff like that.

Van Nest: Let's come back to Yale now. Did you continue your interest in politics when you were a student at Yale?

Orrick: Yes.

Van Nest: What sort of political activities and experiences did you have at Yale?

Orrick: Well, with others -- including Jack Bingham, who was a Congressman; August Heckscher, who wrote for the New York Herald Tribune; Potter Stewart; Louis Stone and Harold Turner -- we formed a political union based on the political union at Oxford. We had the conservative party and the liberal party. And once a week we would meet and debate. It went along fairly well.

I lost interest in it early, because I always had to be at the News. I had to put the News to bed, and sometimes that wasn't until 1:00 or 2:00 in the morning. So, I dropped out. But on the News, we were indeed political. We saved the position of a person called Jerome Davis, who was a well-known priest, I think an Episcopalian priest. I am not sure. But he took up liberal causes, as so many of them did, and he was being fired from the Divinity School.

Orrick: Potter Stewart was the chairman of the Board. And I was the managing editor of the board. He had to write two or three editorials a week, and then the vice chairman wrote one, and the next year's chairman wrote one.

He had the idea that Davis was being fired on account of his liberal leanings. We wrote that story, and, in those days, nobody had telephones in their rooms save and except the newspaper guys. I got a call that morning. I had had about four or five hours' sleep, and I was going to cut the first class. And the call was, "Mr. Orrick, would it be convenient for you to see the President?"

I said, "Yes, yes."

"He will be in the office in a half an hour."

I said, "I will be there in a half an hour."

And, fortunately, Potter got a call, too. So, Potter and I went before President Angell. He was no angel. No pun intended.

He really was rough on us. He told us, if the News got into university affairs like that again, he would see that it wasn't printed there. And we backed out and thought: There was no use telling him that the News building is not on university property. It was built largely through the largess of Henry Luce, who was chairman, and Britton Haddon, managing editor, who created Time Magazine after leaving Yale. We were perfectly free to print that newspaper any place we wanted.

Van Nest: Did you continue to do just that?

Orrick: And we continued to do just that. We were, I think, a little more circumspect than we had been in the past.

Van Nest: Did you have a chance to meet President Roosevelt while at Yale?

Orrick: President Roosevelt, yes.

Van Nest: How did that come to pass?

Orrick: Well, it was during the fall of 1936, and, of course, he was campaigning. Yale University was about 99 percent Republican. I say this to explain the reason that Potter and I were invited to lunch at the home of Dr. Harvey Cushing in New Haven. You may recall that Dr. Cushing's daughter, Betsy, married James Roosevelt.

Potter and I, with a lot of the local politicians, including Governor Cross of Connecticut and Mayor Murphy of New Haven and many other Democrats in the state, were waiting at Dr. Cushing's house for the President to arrive. Potter and I were looking around to find where he was going to come in. We found

the back door and a big ramp built from the ground up into the door.

While we were looking at it, in comes the big Packard touring car that he had, top down, secret service men on either side, and we watched with our mouths wide open as the great man leaned forward and grabbed the bar and pulled himself up. He always had these steel braces on his legs, so he had to have big muscles. He pulled himself up the gangway, and then he got to the top.

He said, "Here, you fellows, help me over this threshold."

So, Potter grabbed one side, and I grabbed him on the other, and we pulled him over.

I said, "Mr. President, my name is Bill Orrick, and I am from the Yale Daily News, and I would like to get a little story."

He said, "I was managing editor of the Harvard Crimson, and when I was managing editor, I put out an extra in New Haven. Ha! Ha! Ha! Ha!"

Everybody heard the laugh, and they came and swept us aside. But I had a story the next day for the front page. It paid off. That was the only time I met him, but as you can see, I haven't forgotten it.

Van Nest: Judge Orrick, there were a great many personalities in your class at Yale, the Class of '37. Which ones did you get to know best?

Orrick: First of all, when I came to Yale, I roomed with Bill Chickering. Bill had been at Thacher and also at Hotchkiss, and so we knew each other well.

Van Nest: And Bill was from San Francisco?

Orrick: And Bill was from San Francisco.

Van Nest: His dad, like your dad, had started a law firm?

Orrick: That is quite correct. Chickering & Gregory. He had two brothers, Allen and Sherman, both of whom are very good friends of mine, who went into the law firm. But Bill, from the earliest times, knew that, whatever else happened in the world, he didn't want to be a lawyer. And he turned out to be an excellent writer. He wrote a book called Within the Sound of These Waves.

During the war, he was a correspondent for Time Magazine. He was up near the front lines whenever he could get there. He became quite a favorite of General MacArthur's. As they were coming into Leyte Gulf, the kamakaze pilots were all around. Bill was up on the bridge talking to the Australian Lieutenant General, who was a commander of one of the armies invading the Philippines.

Bill was never one to take orders from anybody, and so it came as no surprise to me to hear that when the captain of the ship, who likewise was on the bridge, ordered him to cross to the other side because there was a Kamakaze coming in cross-wise, Bill didn't do anything about it. And the Japanese plane smashed onto that end of the bridge, killing both him and the General. General MacArthur named a theater in Yokohama after him called the Bill Chickering Theater.

Van Nest: What about Potter Stewart? Did you and he become good friends at Yale?

Orrick: Yes, we became very good friends.

Van Nest: Where was he from?

Orrick: Potter was from Cincinnati. His father was Mayor of Cincinnati. Then he became Lieutenant Governor of Ohio and, finally, he became a justice on the Supreme Court of Ohio. He took us to the 1936 Republican National Convention that nominated Alf Landon for President.

Potter and I became good friends largely on account of the News. We worked together long hours on the News. Then, in the senior year, we were thrown into very close contact in our senior

society. And I think that I can say for almost every month that has passed since then, except during World War II, I have had some kind of a conversation with him, usually on the telephone.

He was the closest friend that I ever had, and I think that the loss is not only mine, but it is the country's, because he was really the balance wheel on the Supreme Court, particularly during the [Chief Justice Earl] Warren days.

Van Nest: Let's talk a little about Potter Stewart. Was he destined for a career in law when the two of you were together at Yale?

Orrick: Yes. He had intended to go to law school, but at the end of senior year, he got a Henry fellowship to Cambridge where he spent a year, reading for the law, and reading such Roman scholars as Caius.

Van Nest: How was it that you stayed in such close contact with Potter Stewart over the years? Was he someone you saw a lot of in Washington and thereafter?

Orrick: Oh, yes. In the first place, we were in the same profession; in the second place, our friends were the same. Louis Stone used to be Potter's roommate. He was a very close friend of mine also, so we always had "friend" problems to talk over.

Van Nest: Did you become something of a confidant of his once he was on the Supreme Court?

Orrick: Well, we were always very close, and I used to confide in him and seek his advice on many things, Whenever Marion and I were in the East, we spent as much time with him and his lovely wife Andy as we could.

Then, when we moved to Washington, we saw them almost every Sunday. We would take our kids together and go down to a park and play touch football, or go out to a battlefield and have a picnic.

After I left Washington, I got him into the Bohemian Club and

into Zaca camp, which was and is my camp. He had lots of fun in Bohemia. In between the weekends, we would go up to the Cedars, which is nine miles from Soda Springs. He loved to fish. And fishing on the North Fork of the American River is about as good as there is any place, and he just enjoyed it tremendously.

The only other justices who had ever been members of the Grove were Earl Warren and Justice [Robert] Jackson, although Tom Clark, Bill Rehnquist and John Stevens have been guests.

Van Nest: What about Louis Stone: Did you know him well at Yale?

Orrick: Yes, I knew him very, very well. He was very bright. He was as faithful a friend as you could have. He was humorous. And we spent a lot of time together at Yale on the News and in the Society.

Van Nest: What became of Louis Stone thereafter? Did he go on to a career in law?

Orrick: He went to the Yale Law School right away, and then he went into the Army. He was in military intelligence.

Then, after the war, he went to work for the Cravath [Swaine & Moore] office for a time.

Then he decided he would like to go into movies. David Selznick hired him as kind of a special assistant, and he didn't like that too much. He finally went to work for ASCAP. That's the American Society of Composers and Publishers. Then he went over and worked for CBS. All of this was in New York.

Regrettably, in 1958 he committed suicide.

Van Nest: Were there any other classmates at Yale, Judge Orrick, that you became close friends with?

Orrick: Jack Field was another one. He was our class secretary. He was a good friend. He had worked on Time, and then he ran his family company, Warner Brothers. Then he took that public, and I think he resigned shortly thereafter.

Van Nest: Jack Field has written a book about your class called Rendezvous with Destiny about the class of '37. Was there a feeling when you were in college that your class was a special class? You certainly had a number of people who went on to prominent careers.

Orrick: No, there was not. And, if there had been, it would have been knocked out of us by Dean Walden. One of our classmates, and a very good friend, was John Alsop, who was a candidate for Governor of Connecticut and a long-time State Senator in Connecticut, a cousin of the Roosevelts.

During the first two weeks at Yale, he thought it would be useful to take the gasoline caps off all the cars parked on Elm Street. He was apprehended by the local constabulary and sentenced to see Dean Walden, who said, "Mr. Alsop, you are a member of the worst class that has ever come to Yale, and you are the worst member in that class." So, we haven't forgotten it.

Nonetheless, we had our share of prominent people. Besides Potter Stewart, an Associate Justice of the Supreme Court, we had a senator, Peter Dominick, from Colorado; Billy Moore, who was CEO [Chief Executive Officer] of Banker's Trust; and Roger Milliken, who has run Deering-Milliken, and who is very able and very active in politics in his part of the country; Dr. Harvey Brooks, who is a Nobel Prize Winner in Physics and Dean of the School of Engineering at Harvard.

Van Nest: Was there a sense of concern among the class about the crisis developing in Europe at that time?

Orrick: But we were very much aware of the war in Europe, because we had exchange scholars with colleges in Oxford and Cambridge, and suddenly they had to leave Yale to join the English armed forces.

I recall very well Mr. Van Santvoord, who was the headmaster at the Hotchkiss School, coming down to New Haven -- three or four of us had lunch with him -- and he asked us when we were going to sign up. He was very serious about it, because he had been a machine gunner in the First World War, and he wanted to know why we hadn't gone to England and gotten into uniform.

Van Nest: This was in 1937?

Orrick: Yes. So, we were aware of what was going on, including, of course, the celebrated renunciation of the throne by Edward the VIII. We sat up all night and listened to that.

Van Nest: You graduated from Yale in 1937?

Orrick: 1937, yes.

B. With Edward Carter and the Institute of Pacific Relations

Van Nest: What things did you think about doing after you left Yale?

Orrick: Either going to law school or going to work at a newspaper, and I wasn't quite sure. Then, I had the opportunity of traveling with Mr. Edward C. Carter, who was the Secretary General of the Institute of Pacific Relations.

Van Nest: What was the Institute of Pacific Relations?

Orrick: It was a nonprofit corporation formed, I believe, in California and designed to make people on the West Coast and, particularly, business leaders, familiar with the other countries on the rim of the Pacific Basin, such as, obviously, China, Japan, Russia, Indochina, and so on.

Van Nest: How had this organization come to your attention?

Orrick: A good friend of my mother's, Mrs. Emma McLaughlin, whom Dad always referred to as the leader of the intelligentsia, suggested that it might be interesting for Bill Chickering and myself to attend an annual meeting of the Institute at Yosemite. I was very pleased to do so.

My job, when I got down there, was as a rapporteur for a particular conference. The meeting was attended by A. V. Alexander, First Lord of the British Admiralty; Mr. Yoshizawa, Foreign Minister of Japan; Mr. Motylev, from the Soviet Union; Newton D. Baker, the Former Secretary of War from the United States; and Dr. Ray Lyman Wilbur, President of Stanford University, was President of the institute. And there were other people there. I remember Eleanor Heller being there.

Van Nest: What took place at the conference?

Orrick: Discussions with respect to mutual defense. I remember a great deal was made of the so-called Triangular Defense, the Panama Canal, the Hawaiian Islands and Seattle. There was considerable talk about broadening markets and immigration laws and that kind of thing. Their programs throughout the week were excellent. I remember, during the latter part of the conference, Owen Lattimore came. Bill Chickering picked him up in an old Ford, and Mr. Lattimore had just been out in Mongolia. He told Chick that was the softest thing he had sat on for nine or ten months, the seat of that Ford.

Van Nest: Did you then take on regular employment with the IPR, following your graduation from Yale?

Orrick: No. What I did do, though, was take advantage of a chance to go with Mr. Carter, who was the Secretary General of the Institute, and travel with him.

I went to Europe in the summer with Potter Stewart and Louis Stone and some others, and then I met Mr. Carter in Geneva. He had just come from Manchuria, where the Japanese soldiers had blown up a bridge that belonged to China. He would go to the foreign offices of these various countries, and they all expressed great interest in what he had to say in his assessment of the situation, because it was very serious.

As I said, I picked him up in Geneva, and then we went to Paris. Then we went to Amsterdam, then to London, and then came back to New York and made a swing out in the Midwest.

Then we came to the far West. At that point, I decided that I would leave him, and I went to the Graduate School of Business at Stanford.

Van Nest: What had been your role with Mr. Carter? What was the service you were providing?

Orrick: As a kind of an aide who does everything. I helped him lift his suitcase, take charge of the files that he had. I was supposed to be able to take shorthand, but I never mastered the machine. So, I wasn't particularly valuable as a secretary then or now.

Van Nest: Did your affiliation with the Institute become a source of trouble later on in your career?

Orrick: Yes, it did indeed. When I was in the Army as a private soldier, I had made application to get into the Counterintelligence Corps. The Army always ran, quite properly, a record check, and they found that I had been in the Institute of Pacific Relations. The Institute of Pacific Relations was on the FBI [Federal Bureau of Investigation] List because its American Secretary, who was an engaging, attractive, bright man called Frederick Vanderbilt Field, was a card-carrying communist.

So, it was kind of a McCarthy-like situation. If you were tarnished by attending a meeting at which Mr. Field was the speaker, or some other such thing, then you, too, were dangerous.

Van Nest: And that is because Mr. Field was --

Orrick: He was a "card-carrying communist." So, it took me a long time to get over that hurdle and finally get into the Counterintelligence Corps.

C. In the Army Counterintelligence Corps

Van Nest: You did serve in the armed forces of the United States?

Orrick: Yes, I did.

Van Nest: What branch?

Orrick: Military intelligence.

Van Nest: How did you get into military intelligence?

Orrick: Well, Pearl Harbor Sunday was December 7th, and on Monday, the 8th, I went down to see if I could enlist in the Marine Corps or in the Navy or the Army. I went to all three places, and I couldn't pass the eye test. So, then I got into our community air raid warden business. I sat on a board with two police captains to select air raid wardens. Five months later, I was ordered to report on May 9th, 1942, to the Army recruiting station.

It's of some interest, perhaps, that, before that date, at the instigation of my good friend and father-in-law of our daughter Marion, Ike Livermore, we took a trip through the Owens Valley on the east side of the Sierra to one of the places where the Japanese had been sent. You will recall that General Dewitt, commanding the Western Defense Command and Fourth Army, thought that the Japanese living in California would turn into spies and bombers and saboteurs, and arranged to have President Roosevelt issue that infamous order which deprived the Japanese of their homes and their fields that they had diligently cultivated for years, and sent them to these relocation camps, which were nothing more than zoos.

Van Nest: What was your reaction to that order at the time?

Orrick: At the very time, I thought that it was silly because Honolulu was loaded with Japanese, and they weren't concerned about the problem down there. I was outraged when I saw a couple of Japanese in behind this barbed wire who called me by name, and I picked them out, and we talked about it.

They were forced to sell their land at forced sale, and their land was among the richest lands in the country. It lay primarily in the Salinas valley, right in the middle of the "Salad Bowl of

America." The reason there are a lot of rich people down there today is because they bought these lands at fire-sale prices, and the Japanese were never recompensed for their loss.

Van Nest: Once you got into the Army, how was it you found your way into the Counterintelligence Corps?

Orrick: You take an intelligence test, and then they try to figure, when you first come in, where you would be useful.

I was up doing basic training at McClellan Air Force Base near Sacramento. After a day, and not much longer than that, maybe a week after I had finished the training, I got orders to go to San Francisco and report to the Counterintelligence Corps. The headquarters of that was out in the Presidio. The head of it was Colonel Pash, who used to be a gym teacher at Hollywood High School.

I was assigned to San Francisco. So, I took off my uniform and got back into civvy clothes and went down to the Balfour Building and rapped on the door of the Olsen Mineral Supply Company and went in, and there were my fellow spooks.

We were sent to school in Chicago, to the FBI school. While there, we learned such useful things as how to pick locks and steal things and tap telephones and tail people. We always enjoyed that, because the guy that you were tailing would go out, and he would go into the bar at the Palmer House, and we would go in a little bit afterwards and sit around the corner. If we were spied, if he saw us, why, then, we got bad grades. But, they were always nice enough to take us to these great places.

Then I went to another CIC school, which was to learn how to investigate a sabotaged airplane. And that was a 100 percent disaster for me and for the country. I got in old jeans and coveralls and went down to the hiring hall at 4:00 in the morning.

As soon as I arrived at the plant, somebody yelled, "Hey, get in line now. Go get your tools."

So, I had a big toolbox they gave me, and the guys behind the bar said, "What do you want?"

I didn't know what to ask for. "Some pliers."

They gave me pliers.

"You need a ball peen hammer, you need 'this' and 'that,' and you need a wrench. What kind of wrench do you want? Female or a male?"

So, I thought, when they said, "What do you want with your wrench, a male or female?" this was some kind of a joke.

I said, "Ha! Ha! Ha!"

The guy says, "Tell me what you want!"

Well, I would say "How about a female?"

"Fine." He picked up the wrench and threw it in my basket.

So, that was a bad experiment. I guess I was there for the full two weeks. They did have a little classroom work.

Van Nest: What was the Counterintelligence Corps engaged in when you finally got back on the post and out in a job?

Orrick: One of the missions assigned to the Corps in the United States was to check backgrounds of applicants for sensitive positions. We had to write a report, which was called a CIR-1, after a personal investigation. That was name, date, birthplace, father's birthplace, mother's place, education, employment --

Van Nest: And your job was to check it all out?

Orrick: Yes. And go to the school. If he went to Emerson School, you went to Emerson School and looked for his report card, and stuff like that.

Then we also had any number of so-called suspect persons in the area. We would tail them to meetings, photograph them, go into different houses. All that type of covert work. I remember, there was a very important Italian called Sylvester Andriano, who was supposed to stay in Chicago. But he liked to come back to San Francisco. Every time he'd come back, they thought he was going to bring something from Mussolini. We had to follow him and report on his activities.

Van Nest: Was any of that work productive, as far as you knew?

Orrick: The personal background of persons who would be dealing with classified material was important to the officers making such assignments. Then overseas, it became quite a different operation, and I wasn't in it then.

Van Nest: You were strictly here in San Francisco?

Orrick: Except when I went to Phoenix to tail a guy, and this guy was going out and picking cotton. So, that was my job. I was supposed to follow him. And they paid by the amount of cotton you picked. You didn't get a daily or an hourly wage.

So, he started up this row, and I waited until he got up here. And then I started up, and he went down this way. So, that is the way it went. Your fingers get sore, they bleed. And you get through, and this guy -- I don't know if he knew I was tailing him -- put his bag on the scale, and he got eight or nine or ten dollars. I put my bag on the scale, and the guy looked at me, and he says, "Fifty cents."

Then, we were in a little detachment -- Captain Mountjoy was the Commander -- And he said, "Orrick, we are going to really build you fellows up. We are going down to the YMCA at 6:00 in the morning, get a little workout. I want you guys to be able to box."

One of the agents was the captain of the San Jose boxing team. And I knew that. Mountjoy says, "All right, Orrick, why don't you get in and spar a bit with Edwards."

So, I said, "Yes, sir."

I climbed through the rope. I didn't even know how to box at all, but I was watching these guys, and I had been to some movies. Mountjoy yelled at us, "Come on, you fellows, mix it up. What do you think this is, a dance?"

And so, I mixed it up a little bit and, by pure accident, I hit my opponent on the nose. Nobody likes to get hit on the nose. All of a sudden, there was a flurry of fists on my head and my heart.

Mountjoy says "Time! Time!"

And I was black and blue and had a nose bleed. I tell you. That was --

Van Nest: The joys of being in the Army?

Orrick: The joys of being in the Army.

Van Nest: Did you then move on into a special branch of military intelligence in Washington?

Orrick: Yes.

Van Nest: What was the work of that unit?

Orrick: We reviewed raw translations of intercepted, wireless messages and then wrote them up in such a way as would be intelligible to our clients. We had very distinguished clients. In Washington they were limited to President Roosevelt, General [George C.] Marshall, General [Henry Harley "Hap"] Arnold of the Army Air Force, Admiral King, and the Secretary of State.

Van Nest: I take it that you had a sensitive job that made your affiliation with the IPR suspect?

Orrick: Yes. Exactly.

A courier would take these little daily booklets to the clients

and hand it to them, and they would read it while he was in their office, and then he would return it to our branch. The reason the secrecy was so important was that the English had broken the German code, and at NASA we had broken the Japanese diplomatic code, as well as a number of their top military codes. This was extremely valuable because we knew where the enemy was going to strike.

One of the tragedies of it was Mr. [Winston] Churchill was on his way down to Cliveden, his country place. A British courier on a motorcycle stopped his car and told him that they were certain that the next wave of German planes was going to Coventry. Mr. Churchill had to make the decision whether he should call Coventry and alert the people there, because it was just a matter almost of minutes, or whether he should take the chance of the German finding out that the British had broken their codes, as would have been the case if he had notified Coventry.

He decided that he would save more lives if he just kept his counsel and did not warn Coventry. He did not, and Coventry was saturated with bombs and had to be completely rehabilitated after the War.

So, it was the same thing with us having broken the Japanese code, the so-called Magic Code. The British called theirs Ultra. We kept Magic as tightly as we could and did very well with it.

For example, after the July 22nd attempt at bombing of Hitler, where you will recall Count Von Staffenberg left his briefcase filled with a bomb which was to go off after he left the room and was apprehended doing so, we got detailed information about all this from the Japanese Ambassador.

Van Nest: Through the code?

Orrick: Through the code. And he wired a very complete story back to Tokyo, and, of course, our people got it as it was coming.

The Japanese Admiral, who was shot down near New Guinea -- I have forgotten his name -- we were able to intercept his plane

and shoot him down because we had broken the Japanese code and knew what time he was leaving and on what kind of a plane and where he was going. It was easy to plot the course. There were many, many incidents like that during the four and a half years of the war.

Van Nest: For what period of time did the United States possess the decoded information?

Orrick: At least from December 7th.

One of the tragedies of December 7th, which was learned about a week later, was not that General Marshal was out riding horseback, having been warned, having been given the so-called "Winds Message," which was meant to -- well, which conveyed the news that the Japanese were going to strike at Pearl Harbor. But a week or two or three later, as an investigation was being made and people were pulling out the papers and the tapes, there it was, not translated from Japanese into English, the particular cable ordering Admiral Nomora to attack Pearl Harbor.

Van Nest: And that was found where?

Orrick: Practically on the cutting room floor, so to speak. It was found in the office in NASA where they should have translated it.

Van Nest: Someone just passed over it?

Orrick: Yes. A major goof.

Van Nest: Were there a lot of other lawyers serving in Special Branch in Washington?

Orrick: Yes, there were. That, of course, was a totally different operation. There were a number of distinguished lawyers and academics, including Lloyd Cutler, who was later Counsel to President Carter; Jack Bingham, who was a Congressman from the Bronx; Telford Taylor, who was abroad; and Lewis Powell, who was working in our London office and would go back and forth; and a host of others.

Van Nest: How was it that so many lawyers got involved in Special Branch?

Orrick: Because Colonel McCormick, who was in charge of the final editing of that daily journal, which he would rewrite and rewrite, was a Cravath lawyer, and he wanted lawyers. And the commander of the unit was General Carter W. Clark. He was a very military type, but he let McCormick pick his staff. So, that is how we got in.

Van Nest: Was the information you were providing the primary source of military intelligence that people like Roosevelt were receiving at that time?

Orrick: Yes, so far as the diplomatic intelligence went. The military intelligence consisted, among other things, of translations of reports made by Japanese commanders to their superiors. We would summarize their reports for the benefit of the Air Force and the Army. For example, a U.S. squadron would bomb trains and bridges on the Indochina coast. When they returned and were debriefed, they might report that they "destroyed two bridges, an entire Japanese train, and set on fire a warehouse." Then we would get a report on the same mission from the Japanese and they would report, for example, "Four American planes overflew such-and-such a bridge, dropped their bombs in the water, and didn't touch the bridge. Trains are running partially damaged."

Well, that is human nature. The guys coming home to be debriefed wanted to tell them that the mission hadn't been wasted. And on the other hand, the Japanese didn't want to report to headquarters that they had been beaten up. So, that was of some use.

The most use of the lower-type intelligence was order of battle intelligence, and that was useful to the commander in the field, but way down there, down at the regiment or battalion command level -- and we didn't do that there. That was done out in Honolulu.

Van Nest: We got a little bit ahead of ourselves. Let's talk now about law school. Did you enter law school prior to the time that you served in the Army?

Orrick: Yes. You will recall that I left Carter in 1937, at the end of '37. So, from January to June of 1938, I was at the Graduate School of Business at Stanford. The reason I was there then was because I couldn't get into law school at that time. Boalt Hall didn't start until the fall. When the fall came, I went to law school, and for the three years, rather uneventful years -- law school years are tough, as you know better than I -- that was about it. I lived at my aunt's house with two friends, Ed Washburn and Al Wright, the first year. We were about ten blocks from the campus, so we walked up there. And the next two years, I lived at home on Pacific Avenue and commuted by automobile.

Van Nest: Were there some prominent faculty at the time, at the University of California, that you had the benefit of seeing?

Orrick: Yes. There was James Patterson McBaine, who was our evidence teacher and who had a fine reputation. He was a fine man. There was Henry Ballantyne, who taught corporations. He had a fine reputation. They had all published a good deal. There was William Warren Ferrier, who taught real property and future interests.

Van Nest: Was Roger Traynor on the faculty at that time?

Orrick: Roger Traynor, I think, was just leaving the faculty to join the Court. He, of course, became probably the best known Chief Justice of California ever. He had a very high reputation. He taught tax while we were there, one or two years. I remember that.

Van Nest: You are a well-known federal judge now. What sort of a student were you in law school?

Orrick: Not a particularly good student. The Law Review you had to make on the basis of your grades. I didn't make the Law Review on grades. I was highly annoyed. But, in those days, we didn't go around and kick to the teachers about grades. But I was annoyed.

Van Nest: Annoyed with yourself or with the faculty?

Orrick: Well, with myself, primarily. If you are not on the Law Review,

you could submit articles. So, I submitted a note and two comments, which was more than any member of my class who was on the Law Review got published. And that stood me in good stead, and has for quite a while, when I was being considered for different things.

Van Nest: When did you leave the Army?

Orrick: June 16th, 1946.

D. At the Orrick Firm

Van Nest: What did you do after leaving the service?

Orrick: I went back into my father's office. He had a small room there for me. I was assigned to work with Mr. George Herrington, who did municipal bond business. That is what I did for the first couple years after I came back.

Van Nest: Had it occurred to you ever to work somewhere other than your dad's firm?

Orrick: Yes. When I got out of law school, I thought that I would like to work as an Assistant U.S. Attorney, and, of course, the Democrats were in then, and I thought maybe I could do that.

Van Nest: Who was the U.S. Attorney at that time?

Orrick: Chauncey Tramutolo.

Van Nest: Did you explore that possibility?

Orrick: Yes, a little bit with Bill Malone, who was sort of the -- They used to call him the Tammany Hall leader in San Francisco, head of the Democratic machine, and, of course, there's never been any

Democratic or Republican machine, either, any place in California.

Van Nest: How did you know Bill Malone?

Orrick: I knew that he was a lawyer and that he was active in the Democratic party. And somebody I talked to said, "Go and talk to Mr. Malone."

Van Nest: Was your dad surprised by the thought that you wanted to be a criminal lawyer?

Orrick: I didn't necessarily want to be a criminal lawyer. I wanted to try cases. But after the War, I gave up the idea, because all these people that were equal with me in the firm before I went away, and had flat feet or something like that, had moved way up in the firm. I wanted to regain my rightful place, so I got in and dug. It's always points, you know. That is the name of the game.

Van Nest: What sort of work did you have at the Orrick firm those first couple years out of the Army?

Orrick: Besides the bond work, I did some probate work. I did some corporation work, some of my friends came to me for advice for different things in connection with their proposed organization, things like that. They were the only clients I had, and I fixed them to me with hoops of steel, because the firm only had about fifteen lawyers in those days.

Van Nest: How many?

Orrick: Fifteen. And it was considered one of the best firms in town. Pillsbury had forty-five, and they were thought to be enormous. It was kind of dog-eat-dog. Each partner had his clients. Most of the clients were my father's; all the securities clients were Tom Dahlquist's; and the municipal bond clients were George Herrington's. That is the way it was. It wasn't like it was later on, where you develop expertise in a particular branch of the law.

Van Nest: You developed clients, and you served the needs of those clients?

Orrick: That's right.

Van Nest: Did you have a strong interest then in trying cases?

Orrick: Yes. I guess I tried a couple of cases. But, I remember, the first one was on behalf of Mr. Yanulawich, who was a Czech. He wanted to run his own restaurant. And the lessor of the restaurant, he thought, had gypped him. We went out to Municipal Court, where Judge Joseph Golden presided. He looked like a big Alaskan husky, hair out all over here. Mr. Yanulawich could hardly wait to get his day in court.

So, the judge called us in, and he said, "I think you boys better settle this."

My client says, "No. I want my day in court."

The judge says, "Well maybe you better listen to your lawyer."

So, he whispered like that, and I said, "Well, we will go outside and talk about it for a little bit."

"Well," he says, "if you don't do it, I will take the bench in fifteen minutes, and we will go through it. It's a short case."

I went outside and said, "Just as sure as I am standing here, that judge is going to stick it to you."

And he said, "I don't understand it. They told us everybody had a day in court. Judges were fair."

I said, "If you want fair treatment, you split the difference with this guy."

"No."

I said, "Okay."

So, the judge comes out and I make a brief opening statement and call my client, and the judge had his hands covering his face.

Van Nest: Not interested?

Orrick: Not interested, and actually sleeping. So, I turned to the other lawyer, and the other lawyer was silently laughing.

If the judge is sleeping on the bench, how can you awaken him without irritating him? It's bad enough with the jury giving them that seventh inning stretch help. But this -- I had waited a long time.

Finally, the judge looked and said, "Are you all done?"

I said, "Just two more questions, your honor."

"All right."

I asked my questions, and he said, "Now are you done?"

"Yes, your honor."

"Mr. 'So-and-So,' you want to cross-examine him?"

The guy says, "No, I don't want to cross-examine him."

He says, "Judgment for the defendant."

Van Nest: Just like that?

Orrick: Just like that.

Van Nest: That was your first trial?

Orrick: That was the first trial. I wish I had kept a picture of him.

Van Nest: In those first few years of practice, was most of your work outside the courtroom?

Orrick: Most of it was outside. When I first came out of the Army and first started doing the bond work, there were a lot of bonds that hadn't been properly issued, and we needed curative statutes and new

trials and so on, so I rode circuit for two or three months in a number of little towns in Northern California and Sacramento, trying to get the procedure straight. But, save and except for that, I was pretty well tied down.

Van Nest: How were you received by your dad's partners and the other senior lawyers in the firm?

Orrick: I think I was well received by everyone except one important partner, and that is just one of those things.

Van Nest: Just a personality situation?

Orrick: Yes, personality, primarily.

Van Nest: Did you have time during this early point in your career for charitable community activities?

Orrick: Yes. I worked it in. I used to spend my noon hours, as well as a good many evenings, doing it. And, in the course of the years, I was president of the Community Chest of San Francisco and several charitable agencies, including, the Family and Children's Agency, the Mission Neighborhoods Center, and some others. I was also active in my church. I was a trustee of Grace Cathedral for a good many years, as well as being on the Standing Committee of the Diocese of California.

Van Nest: What was the Mission Neighborhood Center?

Orrick: An organization in the Mission District consisting of two clubhouses where young kids from six to fifteen could come could do artistic projects or play basketball or take part in any one of a number of other activities, which they would otherwise be doing out in the street.

Van Nest: Was the Mission, at that time in the early '50's, a depressed area economically?

Orrick: No. It really wasn't. It was beginning to lose its character as the location for San Francisco Irish in San Francisco, and more and

more Hispanics were moving in.

Van Nest: And that was occurring during the 50's?

Orrick: Yes.

E. With the California Olympic Organizing Committee

Van Nest: The Olympics came to California during that period. Did you play a role in that?

Orrick: Yes, I did.

Alexander Cushing had been a client of mine, and I helped him do work up in Squaw Valley where the Olympics finally took place. He would not take my advice on a number of matters, so I terminated our relationship. So, I was quite surprised one day to get a phone call from Cushing, from what is now John F. Kennedy airport.

He said, "I need your help. I have just gotten the Olympic Winter Games for 1960. May I come and see you?" And I said "Yes," thinking what a hare-brained idea it was.

So, Cushing came to see me. He explained that he had lobbied each member of the International Olympic Committee and that they had finally granted him and California the right to hold the 1960 Games.

I said, "What did you tell them about the cost of the Games?" He said, "I wasn't quite clear on that."

I said, "Who is going to put up the money? You and Jock McLean and Lawrence Rockefeller, the others? Have you talked to them about it?"

He said, "No, I haven't talked to them about it."

I said, "Who is going to put up the money?"

He said, "I don't know. Can't you give me some help?"

Van Nest: At that time, was there anything up at Squaw Valley, or had a location been fixed for the Games?

Orrick: No, indeed, it hadn't.

Van Nest: And Cushing had an open-ended invitation to conduct the Games here in California?

Orrick: That is absolutely right. And even worse than that, he had certified to the Committee that he had certain ski runs and a great place on which a bobsled run could be constructed, without having title to the property.

He showed me the picture. I know the area up there. I said, "Whose property is that?"

He said, "That is all public land."

And I said, "That is all under the control of the United States Forest Service?"

He said, "Yes."

I said, "You have already encroached on it, and they can throw you out on thirty days' notice at any time."

"Well," he said, "you work with them, and we will get it done."

So, you can see what a job there was. But I took it on, and the first thing I did was get my good friend Prentis Hale interested in it. He thought it would be a great challenge. So, in no time, he had a couple of his friends help on the Organizing Committee, and then we set about to sell the deal to the State of California.

The governor at the time was Governor [Goodwin] Knight, and the people on the Organizing Committee were influential Republicans, so he was willing to back the effort to raise a million dollars. We asked him if he would appoint a Commission to oversee the disposition of that million dollars. We gave him the names of the people that were supposed to be on the Commission, and he duly appointed them.

Right away, it was obvious that we could not do very much, even in those days, for a million dollars.

Van Nest: Was anyone taking a look to see what the total projected cost of the Games would be?

Orrick: There were some of the best businessmen in California on that committee: Bob DiGiorgio of DiGiorgio Company; Reese Taylor, who was CEO of the Union Oil Company; as well as Mr. Charles R. Blyth of Blyth & Company; and others. And that is the very question that they asked. I let Prentis answer those kind of questions, which he did astutely. He thought and believed that this would be a great feather in the cap of California and that everybody should get behind it. We had a very enthusiastic group.

Van Nest: And you were primarily responsible for the legal work of the Commission?

Orrick: Yes. And it wasn't just pro bono. We were compensated, but in a way it was pro bono because we only charged half, or something like that, of our time. And I had two other lawyers in the office working all the time. The legal problems were enormous.

Van Nest: What sort of legal problems were there?

Orrick: Well, to begin with, we had to get easements for the trail runs from any number of people, and that took up a lot of time. Then we had all kinds of contracts to draft and a number of other matters, including getting the television, which we needed and which we counted on for a good deal of our money.

Van Nest: Was it the American Broadcasting Company that was the leader in

broadcasting the Olympic Games, even back then?

Orrick: I am not sure. I am just not sure.

Prentis and I went to New York to sell it to the TV stations. We worked through J. Walter Thompson and a couple of advertising agencies. We were there for about two weeks, doing nothing but calling on these people and negotiating a contract. Finally, we were able to do that.

Van Nest: I take it, it wasn't the plum then that it is today.

Orrick: Yes. That is absolutely right. It was a daily headache to keep going to accomplish what Cushing had so offhandedly promised, the Olympic Winter Games. Among other things, we had to satisfy, not only the International Olympic Committee, but we had to satisfy the Board of Governors, or whatever they call them, of the various sport federations, skiing, ice skating, hockey, the whole business.

As far as hockey went, we needed, quite obviously, a suitable ice rink, and we did not have the funds to build an appropriate rink.

So, as a last resort, Hale DiGiorgio and I went to Washington to lobby the Congress. The Republicans were in power at that time. DiGiorgio and Prentis and other California Republicans on our committees were substantial contributors. So we finally got the Department of Defense to add $6 million to its defense budget, which would be used to construct a hockey rink.

Van Nest: How was the Department going to fit this into the defense of the United States?

Orrick: I will tell you, we were delighted, of course, to get the money. But I was concerned about the very thing you just mentioned. So, I went back to the Pentagon and talked to an Assistant Secretary of Defense and told him how we were going to keep track of the money. We were going to open a special bank account, have it audited quarterly by certified public accountants, make periodic reports to the Department of Defense and to the General

Accounting Office.

When I stopped, the Assistant Secretary looked at his watch and said, "You have been talking about ten minutes. In that time, we have spent about $100 million. So, kindly leave."

So I said, "All right, but I am going to file my reports." We did build what became known as the Blyth Arena and had the most exciting Soviet-American hockey competition ever, up until a few years ago, when it was the same kind of thing.

But the postscript of it is, when I became Assistant Attorney General in charge of the Civil Division of the Department of Justice, the Fraud Section chief said, "We have a problem out there in California with the hockey rink."

I said, "What is the problem?"

He said, "The rink was built about six or eight or ten feet onto government property, and it's got to be torn down, and we are going to sue the Olympic Organizing Committee."

I looked him and smiled and said, "That is one lawsuit we are not bringing this year."

Van Nest: And the Blyth Arena was actually on government property?

Orrick: Yes. At the end of the Olympics, Pat [Edmund G. Sr.] Brown was Governor. Pat, in a mood that frequently overcame him, agreed on the part of the State of California to buy, not only the Blyth Arena, but the dormitories that we had built, all on Forest Service land, and the ski runs and so on, so we would be able to come out whole.

I am very fond of Pat, and I consider him a good personal friend. I see him every summer. But he did not follow through.

Van Nest: Did you have any occasion to travel overseas as part of your

Olympic efforts?

Orrick: Yes. We had to travel to Bulgaria, to Sofia, where the International Olympic Committee was having its meetings, because we had to make sure that the IOC would not make claim to monies coming from the television, and that that money would come directly to us. We also had to meet with the directors of these sport federations.

That was hard work, and it was hard because Bulgaria was just a caricature of a communist country. We were met at the airplane by our keepers. One person in their secret police was assigned to each one of us. It was about 8:00 at night, so, when we got into the hotel, they said that they would take our bags up, and that was fine, and that they would register us, and that was fine.

I had a little briefcase, a little flat one that I had tucked under my arm. They told us to go right in to dinner. We went in through a revolving doors. My keeper said, "Mr. Orrick, I will take your briefcase."

I said, "Oh, that won't be necessary, thank you very much."

And he said, "Well, I would like to do it. I don't want you to feel embarrassed when you walk in there with a briefcase."

I said, "You don't have to worry about that. I won't be."

All I had in it was a draft of some contracts and things like that, but I thought I would hang on to it. So, I kept it. As the door went around and I went in, he gave the briefcase a tremendous yank and pulled it away from me. I had a decision to make instantly: Was I going to chase him around the revolving door, or was I going to walk in in a stately and dignified fashion with my colleagues? I chose the latter.

When I got to my room that night in this brand new hotel, typical of Bulgarians, I looked in my briefcase as well as in my suitcase. And, of course, they had been through it, because the order of the papers was changed.

Before we went, the people in the security division of the State Department told us that our rooms would be bugged, and they weren't about to send in the Marines for us if we misbehaved. So, it was kind of scary in a way. In the morning as soon was we got up, instead of being plied with orange juice, we would be plied with slivovitz, a prune brandy. So, it was difficult to stay on your feet for fourteen or sixteen hours, to put it mildly, particularly when you had this keeper with you.

If I wanted to go across the street to have a beer, I would tell the keeper, "I am going over there to have a beer, and I will be sitting in the third row, if I can, because it looks like there's an empty seat there." The guy wouldn't say anything, and I would go over and take the seat and, sure enough, he would be there, about four or five seats down. This got rather tiresome.

The night before the morning we left, they gave us a big banquet. In the middle of the banquet, I was just ready for bed. I was tired of the whole business. I thought I would slip out and could do so without being seen, and I was able to do that. I was feeling pretty good. I walked across the square, which was beautiful in the moonlight, and I was looking up, singing, and all of a sudden, I felt something hit me in the stomach. I looked down. It was the muzzle of an Uzi, or what I knew then as a tommy gun.

I put my hands up and said, "I don't speak. I am just going over to the hotel. Just a nice night out here, isn't it?"

And the policeman pulled it back. I said, "I am just going right over there, right over there to the hotel." Well, he walked me over there.

I will tell you, there's nothing that will sober you up more quickly than having an experience like that. In fairness to him, I think I was --

Van Nest: -- deserving of his services?

Orrick: That's right.

Van Nest: Was it during this period of time that you married Marion Naffziger?

Orrick: Yes. I married her December 5th, my father's birthday, 1947.

Van Nest: How long had you known her?

Orrick: Well, I met her at a party that my mother and dad gave for my brother and myself when we came home from New Haven one time. They invited their friends and told them to bring along their children, and that is when I met her.

But we didn't have anything much going until July the 4th of 1947 when her mother, Mrs. Naffziger, invited me -- Marion didn't invite me, but her mother invited me -- to the Cedars. And I went to the Cedars, because an acquaintance of mine from New Haven said he would be in San Francisco July 4th, and I didn't want to entertain him.

Van Nest: Where is the Cedars?

Orrick: The Cedars is a tract of 5,700 acres largely of granite and unusable timber in the heart of the Sierras. It's right below Donner Pass. If you know where Soda Springs is, there's a dirt road that takes you in there nine miles. There are twenty-five members, and each member has a building site and is entitled to bring up his wife and kids and so on. So, on the 4th of July, there must have been 150 people up there.

Van Nest: And the Naffzigers had invited you up?

Orrick: Yes. This was back in 1947. Then I got interested in Marion. She had some friends up there on a house party, and we fell in love.

Van Nest: And you married in 1947?

Orrick: Yes.

Van Nest: Did you start a family right away?

Orrick: Practically.

Van Nest: And you had three children?

Orrick: We had Missy in '49.

Van Nest: And you had two other children?

Orrick: Yes, Mo in 1951, and then our son Bill in 1953.

III. DEMOCRATIC POLITICS IN CALIFORNIA

A. Volunteers for Better Government (1946)

Van Nest: I want to talk a little about politics now. You have been active and were active, before you became a judge, in California politics and national politics?

Orrick: Yes, I was.

Van Nest: How did you first get involved in politics after the war and after returning to San Francisco?

Orrick: Well, along with a good many others who had been in the service, I was appalled at the low quality of the intelligence and character of the people then running the government in San Francisco. There were any number of true-but-sad stories about supervisors like Warren Shannon and others.

Van Nest: What was appalling about the situation?

Orrick: Well, those running the city were just doing nothing. It wasn't scandal. It would be things like this --

In all seriousness, this wouldn't be a joke that was made up:

A member of the board of supervisors suggests that the gondolas on Stow Lake are in very bad shape and that the City

ought to get two or maybe even four. Another supervisor says, "Let's just get a male and a female, and they will probably reproduce, and we will get the four."

And another example was the local public defender, who would get up, time after time, in death penalty cases, and tell the jury, "The gas chamber ain't no detergent to murder."

Van Nest: What, if anything, did you do?

Orrick: We formed a nonpartisan committee, because these city jobs were nonpartisan, and we called ourselves the Volunteers for Better Government. Instead of having some fellow be a self-starter and come to us for money, we decided we would go out and pick someone whom we could trust to run for public office, and we would finance him.

We had a group of downtown backers, Jerd Sullivan, Jim Lockhead, Garrett McEnerny, Ward Mailliard and others. We would have them to lunch, tell them what we wanted to do and how much we thought it would cost. I remember one time Jerd Sullivan picked up his napkin and wrote on it and held it up to the person sitting across the table. He nodded, and we had $30,000. It was much less expensive then than it is now to run a political campaign.

Then we would get our candidate and provide him all the aid that we could. And that aid wasn't simply dollars. Companies had billboards all over town, and they would donate the billboards. You didn't have any fancy reporting rules.

So, with the aid of downtown, we would put on excellent campaigns. We elected Harold Dobbs, who was a first-rate supervisor, who later ran for mayor against Joe Alioto and was trounced. John Ferdon was a supervisor for eight or ten years, and then was District Attorney for maybe fifteen years. Matt Carberry, in his sober days, was a delightful, charming, able, political type. He was on the Board and later became Sheriff. We also ran Roger Lapham, but he lost. We also ran Gene McAteer, who was elected

and later became a very able and powerful state senator.

We didn't lose very many. We picked our spots and did a good job. I was active in that. I was president of it in a couple of years, and then we disbanded it because the campaigns got too partisan.

Van Nest: When you say "we," who else was involved in this endeavor with you?

Orrick: Phelps Hunter, Don Fazackerley, Roger Lapham, John Rogers, Gus Knecht, and others of that kind, sort of the Guardsman type.

Van Nest: Was this more or less a downtown businessman's lobby, Judge Orrick, or did it have a broader base than that?

Orrick: It didn't have a much broader base than that. The members lived in the various areas in San Francisco, so we had the areas pretty well covered.

Van Nest: Were you primarily targeting local positions, the board of supervisors and that sort of thing?

Orrick: Yes. Just City jobs.

Van Nest: Did it turn out that most of the candidates that you promoted were Democrats?

Orrick: Well, let's see. Fazackerley was not. He was a Republican. Harold Dobbs was not. Ferdon was.

Van Nest: It sounds as though it was a mix.

Orrick: No. They were mostly Republicans, I think. I do know that Ferdon, McAteer and Carberry were Democrats.

Van Nest: Why did the Volunteers for Better Government break up?

Orrick: The campaigns became very partisan, and you could no longer sell the Volunteers to the diverse political constituencies emerging then

in San Francisco.

Van Nest: Did you go on then to other political activities and campaign activities here in California?

Orrick: Yes, I did. As I say, I thought it was important to do this. In the [Harry S.] Truman campaign, I was on the Speaker's Bureau.

B. Truman for President (1948)

Van Nest: Let's stop with Truman for a minute. What sort of activities did you get involved in for Truman?

Orrick: Primarily, just speaking in the districts. I didn't have a very high opinion of Mr. Truman, at that particular time, at least. What I would say in my speeches would be: We have got to reelect Democrats, because we don't want to lose a great American as Secretary of State. And I, of course, refer to George Catlett Marshall." It didn't arouse much interest, I have to say.

Van Nest: Was Truman not popular here in San Francisco?

Orrick: Not at all. At that time. This was in the '48 campaign.

Van Nest: And this was a very Republican town then?

Orrick: No. But people were skeptical about Truman's abilities.

Van Nest: Just no excitement.

Orrick: No excitement.

Van Nest: How did you get involved in the campaign? Was Bill Malone someone who asked you to help out?

Orrick: Yes. They had a local headquarters, and I said, "I will do anything."

"Can you speak?"

"Yes, I can speak."

That kind of thing.

Van Nest: Later on, did Harry Truman campaign for Stevenson in the '56 campaign?

Orrick: Yes, he did. He came out to San Francisco one weekend. The problem that faced the campaign committee was what to do with him. Many thought that, at that time, he would not be helpful to Governor Stevenson, nor did they know what to do with him.

Van Nest: Why was it felt that he wouldn't be able to help the governor?

Orrick: Because he hadn't been very enthusiastic about him in the first place. Stevenson, of course, had lost to Eisenhower in '52. They were just different types of people.

I was assigned the task of taking President Truman Saturday night to the Press Club and let him address the Press Club, which I agreed to do. I had several amusing experiences with him. He was staying at the Fairmont Hotel, which is right across from the Pacific Union Club. When I picked him up, he said "You see that club? That is the Union Pacific Club, and every time I come to San Francisco they always pull down their shades."

I said, "Mr. President, as a matter of fact, I know about that club. It's the Pacific Union Club, and they don't do anything of the kind. The setting sun shines directly into the large sitting room where shades are down."

He said, "Nonsense."

Van Nest: How old was President Truman at that time?

Orrick: Maybe in his 70's. I am not sure.

Then we went down to the Press Club. The place was packed. That means there were maybe 150 or 200 people there. The Press Club has a tradition. They have a stone sculpture of a black cat. The cat is lying down. If the speaker of the evening puts the cat in front of him, it's a signal to all the reporters that he is speaking off the record.

So, Truman and I were shown to the head table. He found another friend at the head table. They were busy talking. One of the photographers -- actually, Joe Rosenthal, the one who took the picture of Iwo Jima and the flag -- said, "Bill, ask the President to pat the cat."

So, I jostled his arm a little bit. He didn't pay any attention to me.

Rosenthal said again, "Get him to pat the cat." I got his attention, and I said "Mr. President, this is an old tradition here in the Press Club. I explained, "They want a picture of you patting the cat."

Truman replied, "I will do no such thing. I hate cats. And Bess hates cats. If she ever saw a picture of me patting a cat, she wouldn't let me in the house."

C. Stevenson for President (1952)

Van Nest: When Stevenson ran in '52, did you get involved in the campaign?

Orrick: In much the same way. I didn't do a great deal for him. I was very much taken by him, as were many, many people. It wasn't as though there was a Stevenson tide coming over the country, but if you sat there and listened to the splendid speeches and then

listened to Ike, all you could do was come out for Stevenson. He really was great.

But he didn't have much of a campaign going in California. It was at about this time that Alan Cranston, now United States Senator, started his Democratic clubs. They were known as The Clubs. They were little groups of Democrats all over the state. They have a big convention usually in Fresno. I attended that once or twice.

But these guys were pretty far to the left, for the most part. At least they were too far left for my taste, which I tend to think is about in the middle. But that was a big activity, and those groups got Cranston elected to everything.

Van Nest: Did the Democratic clubs work in conjunction with the Stevenson organization?

Orrick: Yes.

D. Graves for Governor (1954)

Van Nest: In '54, [Richard P.] Graves ran for governor against Goodwin J. Knight. What role did you play in that campaign?

Orrick: I played a very important role by the name. I was treasurer for Graves, which meant that I did nothing at all, because there was no money. Roger Kent was the campaign manager. He got me into it. There were people like Pierre Salinger and Don Bradley involved. Somebody asked Graves, the day before the filing closed, whether

he was a Republican or a Democrat. He said, "My god, I am a Republican."

So, they rushed him down to City Hall and registered him as a Democrat. Those were in the days when we had cross filing.

Van Nest: Who was Graves' opponent?

Orrick: I believe it was Governor Knight for a second term.

Van Nest: Was Graves openly opposed in the primary?

Orrick: Yes. But bear in mind that, at this time, we had cross filing in California. That is to say, that if a Republican liked a Democrat better than the Republican endorsed on the ticket, he could cross over and throw his vote for the Democrat. And that is precisely what happened in the Graves campaign in reverse, namely, people liked Knight better than Graves. They didn't care whether he was a Republican or a Democrat. They crossed over and voted Republican, and Knight won by a landslide.

Van Nest: Graves, I take it, went down to defeat?

Orrick: Graves went down to defeat. He and his wife were at our house for dinner on election night. His wife had never supported him for anything. She kept saying, "See, I told you so."

Van Nest: How did you go about raising money at that time? At that time, you were thirty-nine. How did you go about raising money for candidates like Graves?

Orrick: Well, as in every Democratic campaign that I participated in, the wonderful people like Ed Heller and his able wife, Ellie, were the backbone of the campaign, financially, morally, and otherwise. They got great assistance from Ben Swig, who was helpful at all times, and also from Bill Malone, the long-time Democratic political leader in our city. Bill Roth was another leader.

We would attend meetings called by them and discuss possible persons who could contribute and make assignments, and go out and do our best to persuade what seemed like a very few wealthy Democrats to back our candidate.

And, as Ben Swig would say, "If you are going out to raise money, you don't bark like a dog; you ask for the money."

Ben would hold a meeting in one of the rooms in the Fairmont and get a staff person who always planned it through the years. Most of the time, it was my good friend Jack Abbott. They would work up lists, and then you were supposed to bring people there to the meeting and use whatever device you needed to use to part them from their money.

I remember, during Jack Kennedy's campaign in San Francisco, Ben got some rooms down at the airport. I met the President-to-be and brought him into the room. We came in, the room was crowded, and Ben closed the doors and locked them and said, "Now fellows, we are working for the next President of the United States. Walter, how much are you in for? $50,000? I won't take that, Walter. I am very sorry. Just think again, Walter. Think again. Why don't we try a hundred and fifty, Walter?"

"Well it's been a bad year."

It will be a worse year next year if you don't get Kennedy elected."

Jack Kennedy was so embarrassed that he kept saying, "Get me out of here."

I said, "You won't raise any money if you are out of here. They are all looking at you."

E. Stevenson's Second Campaign (1956)

Van Nest: What about when Stevenson ran again in '56? Were you involved in the campaign the second time around?

Orrick: I was really involved in that one.

Van Nest: He lost once to Ike. What was it about him that attracted you to Stevenson?

Orrick: His intelligence, his thought on serious problems that faced the world then, and his compassion for his fellow human being. He was a fine character, indeed.

Van Nest: Had you gotten to know him at all well in the '52 campaign?

Orrick: No. But I got to know him really well in the '55 campaign. I started in November of '55 to campaign for him, when they asked me to be chairman of a meeting, which included these club members, as I have told you, and some fat cats. I was warned that this meeting was going to break open, and "You have got to do this and this and this."

And so I presided, and, thanks to the help that I got from the group, our group, stationed in different parts of the room, I was able to determine whom I should recognize and whom I shouldn't recognize.

Van Nest: Was the purpose for the meeting to decide between [Estes] Kefauver and Stevenson?

Orrick: We had gotten rid of cross filing. We wanted to see if we could pull the Democratic party together and get it behind Stevenson. We did a good job at that. About that time -- November or December of 1955 -- Stevenson's gang arrived, including Marietta Tree, Bill Blair, Hy Raskin, who was a pro from Chicago, and Jim Finnegan, who was his campaign manager. We had that group here at our house for dinner.

After dinner, Jim Finnegan took me aside and said, "Now, you are Chairman for Northern California?"

I said, "Yes, I am, Jim."

And he said, "Have you got chairmen in the other cities?"

I said, "We will have them." We had only twelve months to go.

Van Nest: This was November of '55?

Orrick: Yes.

He said, "What kind of a precinct organization do you have?"

And, just to be facetious, I said, "What is that?"

And I noticed him tremble. He put his hand in there to mop his brow and said, "Now look, Bill, this is serious. We have got to have a precinct organization."

"We will do the very best we can."

He said, "Who is head of the machine?"

"We don't have a machine."

"Nobody will believe that. What about Malone?"

I said, "Malone can't be a one-man machine. He would vote Democratic if the devil were running."

From then on, he always asked how the precinct organization was coming. And we got good pros and did a good job, as we always do, really, in the Valley, because we have the McClatchy papers. Mr. McClatchy, in his will eighty or ninety or one hundred years ago, left the newspaper to the family with the proviso that it always endorse the Democratic candidate. They have done that ever since.

On election night in the primaries, Stevenson had a 400,000-vote lead over Kafauver in the territory north of the Tehachepis.

Van Nest: Was there a divided California contingent at the convention that year, the nominating convention?

Orrick: Yes. There always is.

Van Nest: Where was the convention?

Orrick: Chicago.

Van Nest: Had you spent much time with the candidate prior to the convention?

Orrick: Well, I travelled with him around Northern California.

Van Nest: That was before the convention?

Orrick: Before the convention, and then after the convention, we had a dinner here for about fifty people for Stevenson and Kefauver.

Van Nest: Was it a whistle stop tour that Stevenson made out here?

Orrick: Yes.

Van Nest: Where did you go, and what was it like?

Orrick: We went over to the San Joaquin Valley. It started at Dunsmuir, a little town on the Oregon-California border. At each stop in the Valley, Stevenson would get out on the observation platform, and give his speech. As soon as the train stopped, all the reporters would get off the train and come around back and see how he was doing, if he changed his speech any. I was with him part of the time and with the reporters part of the time. It was lots of fun.

Van Nest: This was a classic, old-fashioned, whistle-stop tour?

Orrick: Yes.

Van Nest: In that day and age was there advance work done that was an important part of it?

Orrick: Yes.

Van Nest: Did you have an organization to do that for you?

Orrick: Yes, we had a good organization over in the Valley, and they got people out and did a good job.

Van Nest: You mentioned the McClatchy newspapers. Was the media a big part of political campaigns back then, in '56?

Orrick: Not really. For example, in San Francisco it was possible to cover most of the city by ringing doorbells. That had a big effect, as did bumper stickers and that kind of thing.

Today, people won't go out at night. They don't poke their heads out, and they are afraid to answer the door. They would rather be sitting in front of the tube. That is why today the money for TV ads is so important.

Van Nest: I take it that TV and radio played almost no part in Stevenson's '56 campaign?

Orrick: That's right. Very little. It was the personal contact and the whistle stops here and there, the newspapers and that sort of thing.

Van Nest: What happened at the convention? Was Stevenson a shoe-in?

Orrick: His main opposition came from Averell Harriman and Estes Kefauver. Averell had the old-timers with him, but Stevenson was a new face, and he won quite easily, as I recollect, over Kefauver and Harriman.

The real excitement in the Democratic convention of that year was: with whom would Stevenson run? Normally, theoretically, the candidate picks his running mate. Actually, the smoke-filled-room boys pick the candidate. In this case, the decision was that they would actually let the convention do it.

So, they put up Jack Kennedy against Kefauver, and we all thought Kennedy was great. Most of us in California stayed up all night trying to persuade others and to count votes for Kennedy. And the next day it was really exciting. Kefauver finally beat Kennedy.

Van Nest: When had you first met Jack Kennedy, Judge Orrick?

Orrick: I met him when he came to California in 1956. We were all so enthusiastic about him that we asked him to be the key speaker at our big -- for us at least -- fund raising dinner in the Fairmont Hotel.

Van Nest: Was this after Kefauver had been selected as the running mate?

Orrick: Yes. And then this was going to be the biggest fund raising effort that we had. So, we all got out and tried to knock up people for $100, which was big then. We had the place packed, and everybody was at the table looking for Kennedy. Kennedy came in a little late. While people were eating, he scribbled some notes on the back of an envelope. He stood up and got a smashing ovation. And then he started on this speech, and it was very poor indeed. He didn't have Ted Sorenson around to write those moving speeches.

Van Nest: He was not prepared?

Orrick: He was not prepared. And we were furious. So then, part of the ritual was to go upstairs so that the fat cats, so to speak, would have an opportunity to converse with the candidate. And Kennedy hated stuff like that. I told you about the fund raising in the airport, where he said, "I can't do this. I won't do it."

Well, he got kind of antsy upstairs. His friends, headed by my old friend Red Fay and Jack Warnecke and some others, came to pick him up and take him out to wherever he was going. And we were left holding the proverbial sack and mad.

Van Nest: And this was your first introduction to Jack Kennedy?

Orrick: Yes.

Van Nest: And he did little to redeem himself, as I recollect, at least during the campaign.

Orrick: At least during the campaign.

Van Nest: Did you continue to be very active in the campaign, right up to the election?

Orrick: Yes, very.

Van Nest: Were there a lot of appearances out here by Stevenson?

Orrick: Two. But I can remember, on October 26, in front of at St. Peter and St. Paul Church on Washington Square there was an ocean of people. Our guys from around the counties had chartered busses to bring in people to hear him, and Stevenson gave a little talk, which was very good. They cheered and cheered and cheered, and then when he went off he said, "Well, Bill, how will I do?" I said, "I think you will do great, Governor, just great."

The Governor was tight, in the money sense. When he would get presents, he would give them to Bill Blair and would say, "Send that to Libertyville." Here, they had given him a shawl with silver dollars all through the shawl. He said to me "Bill, will you send that back? Oh, you might be too busy." He turned to the back seat, to Bill Blair, and said, "Bill, be sure that goes by very special mail." It might have been worth $50, or something like that.

He thought he had a chance, and then came Suez a couple of days later, and it was "bye-bye, baby."

Van Nest: Why did that have such a big impact?

Orrick: Military leaders, military job. Eisenhower had told Britain and France, "Don't do it." That was one time it was better not to change horses in the middle of the stream.

Van Nest: Did Stevenson carry California?

Orrick: I don't think so. I don't know how many states he carried.

F. Pat Brown for Governor (1958)

Van Nest: What was the next political campaign that you got involved in, Judge?

Orrick: The next one was Pat Brown for Governor in '58. He ran against Bill Knowland.

Van Nest: How long had you known Pat Brown by that time?

Orrick: I had known Pat for years, when he was District Attorney. The District Attorney's Office was near our office, and I saw him frequently. I had helped Pat in one of his campaigns for District Attorney and had helped him in the campaign for Attorney General. Despite the Kennedy fiasco, we had our Democratic team going along pretty well.

Tom Lynch was the Attorney General and a close friend of Pat's and a very close friend of mine. He and I were the Co-Chairmen. We would go up to places like the Blue Gum Lodge, up in Mendocino County or something, and there would be twenty-five people in there on a rainy night. I would get up and introduce Lynch as the greatest living American. Lynch loved it, and the people loved it.

Van Nest: What sort of a campaign did Pat Brown run? That, also, I take it, was not a big media campaign.

Orrick: That's right. He had roots all over. As Attorney General, he knew the Sheriff of every county. Pat is the kind of a guy who can't stand to be alone. He always has to have people with him. He

knew everybody. We still had the nucleus of our previous campaign, which was only two years before, and we reactivated that. Pat won, hands down.

Van Nest: Did you do a whistle-stop tour with Pat Brown?

Orrick: No, Pat didn't do that. After he was governor, Pat had an airplane, a marvelous old DC-3. It had windows from here to here on both sides. He called it the Grizzly Bear. He would travel on the Grizzly Bear. I don't think the Grizzly Bear went more than a hundred miles an hour. He just loved that. But he didn't do the whistle stop.

Van Nest: Who was Brown's opponent in '62?

Orrick: Richard Nixon.

That is when Nixon said he was getting out of politics. He said, "You won't have Richard Nixon to kick around any more."

Van Nest: What sort of a campaign did Nixon run?

Orrick: A single-man campaign. I don't remember who he got to run as Lieutenant Governor. The people hated him. My brother was supposed to run his campaign up here. He couldn't find anybody to talk to. But he did lend his name to it. He never heard one word from Nixon before, during or after the campaign. It was before Nixon had [Robert] Haldeman and [John] Ehrlichman. He had somebody else.

Van Nest: Did he run primarily a Los Angeles-based campaign?

Orrick: Yes. And Pat beat him.

Van Nest: Were you interested in a position with the Pat Brown administration when he was first elected governor in '58?

Orrick: Well, sometimes I wanted to get into politics. After the election, Pat invited some of us down to Palm Springs to a place that we call "Bandini Acres." We call it that because the Bandini, which was

fertilizer, was all around our place and under our beds and all. We said, "Thanks a lot, Pat."

He took me aside and said "Bill, what do you want? I want to help you in this thing."

I said, "I want to be a Regent at the University. And that is first."

And he said, "Gee, everybody wants to be a Regent of the University."

I said, "Well, that's right. Or the Director of Finance."

At that time, in state government, that was a very important position, one from which you could run for governor. Well, he had in mind what I wanted, and he didn't come through on either of those. Then he had Fred Dutton call me and ask me if I would go on the Superior Court. I said, "No, I don't want to go on the Superior Court." I was just getting going in the law firm, and that didn't appeal to me at all.

Van Nest: Why didn't the Superior Court appeal to you?

Orrick: You have to run for public office every six years. They temper their opinions and remarks all too often to: "What are you going to do for me next year?" You see your finance chairman down there making a speech: "If your honor please, it would seem to me summary judgment would lie in this case," understanding it didn't lie in any other case like this, but it would lie in this case. And then he looks up at you, and you are looking at him.

It was not for me. I couldn't sleep at night on something like that.

Van Nest: Had you given any thought, Judge Orrick, up until '58, in the course of all of the campaigns that you worked on, to running for office yourself?

Orrick: Well, I tried it once for a week. One Saturday morning, when we

were here, I opened the newspaper. There on column one, front page, was a story about the upcoming mayoralty campaign with the statement that Attorney Bill Orrick has a big following and is thinking seriously of entering the campaign. It was made up out of whole cloth.

So, I told Marion about this and said, "How do you like that? Mayor Orrick. I could do a lot of good for the City." Marion didn't think very much of it.

I had two good friends that I brought in to discuss things, Tom Page and Harold McGrath. On Monday morning, I started to see if I could count some supporters. So, I thought, "Well, I will take the worst one first."

I went over to talk to Jack Goldberger, who was head of the Teamsters. I had seen him in all the political things. I said, "Jack, how does that grab you?"

He said, "Not very well."

Van Nest: You were perceived at that time as a downtown lawyer, I suppose.

Orrick: Yes.

He said, "What are you going to do for my people?"

I said, "Darned if I know, Jack. Why don't you tell me?"

He said, "Well, if you get a following, I will tell you, all right."

So, I left that. Then I went to see Gene McAteer. McAteer ran a big restaurant here. He was a football player. He put his jaw out there, and he said, "Well, I will tell you. I will back you the day you bring me your bank book which shows $100,000 in it just for this campaign."

I said, "Well, thanks a lot."

I went to one or two of the newspapers, but I couldn't feel any draft back here at all.

Van Nest: No ground swell under your feet?

Orrick: No ground swell under my feet.

So, McGrath said, "You give a lunch for everybody in this city that you think is for you, and we will talk about it after lunch."

So, I invited some good friends. After I had signed the bill after lunch and they had all left, I said, "Harold, I resign."

But Harold made me take a ride, and he said, "Get up on these wonderful hills we have and then go down and write your inaugural speech." I even did that. But it wasn't good enough. So, that is the only time I ever thought about going into elective public life.

G. Early Law Practice in San Francisco

Van Nest: You were practicing law at the Orrick firm throughout the 50's and throughout all this political activity that we have been talking about?

Orrick: That's correct.

Van Nest: Can you give us some idea of what sort of a practice you had at that time?

Orrick: As I mentioned earlier, I was trying to get clients. I was made a partner in 1951, I think, and so I got my fair share. But I was competing with some people who didn't like the fact that I was in my father's office, nepotism. Dad, by that time, was in his 70's, and I wasn't getting his clients. His clients weren't turning to me.

Van Nest: Was that because of your politics, you think, or simply the fact that you were so much younger than your father?

Orrick: Partly, I think, politics, for a little bit of it. Not very much. But they were all quite a bit older than I was. So, I kept my nose to the grindstone, doing everything I could lay my hands on. Then, on one happy day, Phil Coghlan, in the Chickering office, asked if he could come over and talk to me. I said, "Sure."

So, he came in and said, "We have this Miller & Lux litigation. C. Ray Robinson, who was the lawyer for the plaintiffs, has just sued my father-in-law, Mr. Blyth, and his friend, and our friend, Mr. Harry Fair. I have talked it over with them a lot, and they would like to have you represent both of them." I would never have expected that.

Van Nest: Why not? What sort of litigation was the Miller & Lux litigation?

Orrick: The gravamen of the complaint was that, during the time that they had been directors of the Miller & Lux Company, they had defrauded the shareholders and had squandered money.

Henry Miller was one of the early settlers here. It was said that he could drive his horse and buggy from the Oregon border to Mexico and stop every night on his own land. He had just lots and lots and lots and lots of land. And his heirs, of course, were anxious to get their fair share. The charge had been also that the directors had laid off this money to all kinds of fake people and some to other people who weren't named. It was a big mess.

C. Ray Robinson represented the plaintiff's heirs. He was a very good trial lawyer. He got another sharp trial lawyer out of Tennessee. They went after that money. I don't know why he didn't take the depositions of Blyth and Fair at the beginning. But he had everybody else there. So, we had a Miller & Lux Bar Association, which did nothing for three years, at least, except take depositions. I was thrust right in the middle of that.

Having done nothing but that for a year -- -- or two years, I guess -- having a good rapport with all the other lawyers, I learned

a lot. I got to know a lot of the lawyers, which helped me in Washington. I did have to give up the client, if I took a job back East. And so, I had it fairly well settled in my mind that I wouldn't give up the client.

Van Nest: What sort of a practice did you have? Was it primarily a litigation practice then, in the 50's?

Orrick: Primarily that. In the late 50's.

Van Nest: Primarily commercial civil matters?

Orrick: Yes. No criminal cases.

Van Nest: Who were some of the other prominent lawyers in San Francisco practicing in the areas that you practiced in at that time?

Orrick: Well, Morry Doyle, Ham Enersen, over at McCutchen; Herbert Clark at Morrison; and Theodore Roche.

Van Nest: Did you know Jack Sutro?

Orrick: Yes. He is a very good friend of mine and a fine lawyer. He did a lot of very useful work for the telephone company and was, of course, very active in the American Bar Association. I believe he was President of the Bar Association of San Francisco and the State Bar of California. He has also been chairman of a number of committees of the ABA, including its most prestigious committee, which reviews the records of persons who are being considered for federal judges.

Van Nest: Was much of your practice then, before you went to Washington, in Federal Court?

Orrick: I would say about half in Federal Court and half in Superior Court. And not enough of either.

Van Nest: What do you mean?

Orrick: That I would have enjoyed more trial work than I had. As you

well know, in a big office, most cases are just settled. The best litigation, which was litigation and not trial work, in effect, after Miller & Lux, was the water meter business.

Before leaving Miller & Lux, I think I should say that the directors won on the statute of limitations, which went up on appeal. Just to emphasize this: the only director that Robinson didn't sue was Max Sloss. The reason they didn't sue him was he abstained from voting.

Van Nest: For two years of litigation?

Orrick: More than that, really. Six. They didn't end it until I got there. They never got to trial.

Van Nest: Who were the prominent members of the Federal Bench before you went to Washington?

Orrick: Louis Goodman. Absolutely superb judge. He was Chief Judge for quite a while.

[Adolphus] St. Sure was there. He was a crusty old so-and-so. He was the one who, for no matter what you did -- steal a postage stamp, anything -- he would put up his hand and say, "Five years," and the defendant would be marched off.

One time, a lawyer, who was a good little boxer at California, Sol Abrams, was representing a fellow before St. Sure. St. Sure had said, "Five years."

Abrams said, "Would your honor consider a $500 fine?"

St. Sure said, "Yes. That is five years and a $500 fine."

Van Nest: Who else was sitting on the bench at that time in Federal Court?

Orrick: Mike Roche, the big labor judge. And I am not sure how many other judges they had. George Harris went on. He went from the Muni Court to the Federal Court in about '50, I think.

IV. THE KENNEDY YEARS

A. The 1960 Campaign

Van Nest: Judge Orrick, did you have occasion to work for the Jack Kennedy campaign in '60?

Orrick: Yes, I did. I was at the convention in Los Angeles as a delegate. The Democratic Party in California had convinced the Kennedys to let them pick their own delegates. The theory was that most of the delegates would be for Jack Kennedy.

I arrived at the hotel in Pasadena and saw Pat Brown and said, "Where is the convention? When are the delegates going to meet and where?"

He said, "Golly, I don't know, Bill."

Then Tom Lynch came along, and he said, "We are meeting up in such-and-such a room."

Then along came a fellow we called Bullethead Miller, who was a fine man, a State Senator. But he wanted to see the delegation go to Stevenson. He had called for a meeting in his room, and all the delegates, or most of the delegates, went to his room. The Kennedy delegates consisted of Tom Lynch, Patricia Lawford, and me.

Van Nest: Was this a difficult choice for you to make? You had been a big Stevenson booster in '56, and you had one bad experience with Jack Kennedy. What was it that made you a Kennedy booster in '60?

Orrick: Well, as much as I liked Stevenson -- and we had a good interpersonal relationship -- I decided, since I had been close to him in the campaigns, that he could never make up his mind, and he never got things done until the last minute. So, I thought that I would go for Kennedy.

Now a very close friend of mine from similar background, who is also a Democrat, is Bill Roth. Roth didn't want to go for Kennedy, but I persuaded Roth to meet with Kennedy up in a hotel room en route to Los Angeles. He and I did that, and I said to Jack Kennedy, "Have you made any kind of a commitment to having Adlai Stevenson as your Secretary of State?"

He said, "That is exactly what I plan to do."

So, we walked out, and I said, "Now, see, Roth, you have got to vote for him."

In Pasadena, Roth was still undecided -- he had Bill Malone and Ed and Ellie Heller begging him to vote for Kennedy. He was very close to the Hellers. As I recall, the California delegation was split evenly, and he was the deciding vote.

Van Nest: "He" being whom? Roth?

Orrick: Roth. The next day, after the convention was over, we finally got a count on the California delegation, which was thirty-four for Kennedy and thirty-two for Stevenson. This is what always happens. We are the biggest state in the union, and we had no clout at all at the convention, mostly, because we don't vote. We are always fighting on the issues. That is, it used to be.

Van Nest: You started telling us at the outset that the Stevenson group had all the delegates, or a lot of them, and you had three or four. How did you turn the tide?

Orrick: By calling on the wavering delegates. The Kennedy campaign had a downtown headquarters team that would go to any shaky delegation, and it would be a top-level team. Even Bobby would go once in a while. So, they would say, "We are counting on you, Joe" and all this stuff. But the vote wasn't close in the convention. They really didn't need California, but that is the way it always is, regrettably.

Van Nest: What happened after you got past the convention? What sort of role did you play in the Kennedy campaign?

Orrick: Tom Lynch and I hitched up our dog-and-pony show and took it on the road again. We got the same pros and the same groups up and down the northern part of the state that we had in previous campaigns. Then, the Kennedys, in every place that they could, had their own campaign, and Bobby and Byron White came out.

Van Nest: I understand that in other states they ran their own campaign. They didn't have people like you and Tom Lynch running the campaign.

Orrick: That's right. Or they distrusted the party organization, so they just had their own organization. And when White and Kennedy came to town, Tom Lynch and I went up to call on them. That is the first time I met Byron and Bob. We asked, "Are we running the campaign in Northern California? We want to know."

Van Nest: Who was present at that meeting? You and Tom and Byron White and Bobby Kennedy?

Orrick: Yes. Bob gave his eloquent, "Yeah."

So, Tom and I turned on our heels and said, "Thank you, and we will take hold of it."

Well, in the meantime, the Kennedys hadn't quite given up on this. So, Admiral Harlee, who had been in the same PT boat squadron with President Kennedy, was designated to run a separate campaign for the Kennedys. We staffed his campaign. So, we knew exactly what they were doing. He and Red Fay were doing

crazy things like distributing balloons that looked like donkeys, and things like that. They had no idea where the town of Coarse Gold was or where the Blue Gum Lodge was or who was on our team in any town in Northern California.

Harlee would sit in his office and order 5,000 leaflets distributed in Northern California. They would arrive near Mount Shasta some place, and nobody would come to claim them. He was always writing telegrams about what he was doing and how it was all going well.

Van Nest: Did the situation come to a head, then, as between Harlee and that campaign, and you and Tom Lynch?

Orrick: No. Because they weren't doing anything useful.

Van Nest: You just ignored them and ran your own campaign?

Orrick: Right. When we had big dinners, we would invite them to come. But we didn't even have them try to collect money from our private backers.

Van Nest: Was the fund raising done in the same manner that you described earlier, big dinners and that sort of thing?

Orrick: Exactly the same.

Van Nest: How many times did you have the candidate to California?

Orrick: We had him once in the Cow Palace in October and once at the start of the campaign. He started his campaign at the San Francisco Airport where he addressed a big group and then got back on his airplane and went to Alaska.

Van Nest: Was there a whistle-stop tour for Kennedy in California?

Orrick: Yes.

Van Nest: When was that?

Orrick: That was the end of September, beginning of October. It started, as the other one had started from Dunsmuir. And the same people were on it. The county chairmen would get on and ride to the next stop. The boys in the bus would get on and do exactly the same thing. It ended up in Bakersfield. But it really did more to get a big crowd out in the Valley than anything else we could have possibly done, because there he was. He got tremendous ovations every place that he went.

Van Nest: Was media a big factor in California? Everyone remembers the Kennedy-Nixon debate, of course. Were they a big factor here in California?

Orrick: Yes, they were. But there wasn't much else by way of media coverage, save and except the usual printed press.

Van Nest: What was it like traveling with Kennedy? I take it you did the whistle-stop tour with him?

Orrick: Yes.

Van Nest: Was he fun to travel with?

Orrick: Great fun. He gave the same pitch each time, and it was very relaxing for him. The reporters would get a little irritated with him, because you can't print the same story more than three or four times. But it was fun. We would bring in the county chairmen and introduce them, and he was gracious and a thorough gentleman. He was great.

Van Nest: And you won big in Northern California for Kennedy?

Orrick: Yes.

Van Nest: Judge Orrick, where were you and Mrs. Orrick on election night in 1960?

Orrick: We were right here in our home holding an election party, which we did every election year. We would invite the people with whom we had worked closely together in the campaign, set up several

TVs, get on the phone to the first precinct to report, which was down in Los Angeles and, generally, enjoy ourselves, provided the Democrats were leading.

On the Kennedy election night, you will recall that the vote was so close that for a long time nothing happened, no new numbers were put up on the boards in New York or Hyannisport or Los Angeles or wherever it was that Nixon was. We stayed up until the early hours of the morning and, as I recall, we still didn't know whether or not the returns from Cook County had made him President of the United States.

Van Nest: Was Cook County the last county to report that year?

Orrick: Yes, it was. And I suppose the reason was that there were so many poll watchers on both sides, and Cook County, of course, was heavily Democratic territory. But that is my recollection, that it came in about last.

Van Nest: When do you recall finally learning that John Kennedy was to be the next president?

Orrick: About 9:00 the next morning.

B. Forming the New Administration

Van Nest: Had you given any consideration up until that point as to working in the Kennedy Administration, if and when Jack Kennedy were elected?

Orrick: No, I really hadn't.

The situation at that time was: I was in mid-career. I was forty-three and really beginning to move. I had some big litigation, particularly the Miller & Lux litigation, in which I was deeply

immersed. Our kids were all at different schools, each one of them doing a good job. So, there wasn't any particular reason why I should have been thinking about it. The fact is, I didn't think about it to any great extent. I remember at one point looking at a list of some positions in an administration, but I wasn't interested in them. So, as far as I was concerned, I was delighted President Kennedy was elected and we would have a good four years coming up.

Van Nest: Did you make any inquiries yourself after the election, as to whether or not a job would be available for you?

Orrick: No, I did not.

Van Nest: How did it come to pass, then, that you were invited to join the new administration?

Orrick: On New Year's Day, we were sitting around the swimming pool at the San Ysidro Ranch, down in Santa Barbara. We went there every New Year's with some friends. I received a telephone call from Lloyd Cutler, who was and is a very close friend of mine. He said, "You better come back here and look over these jobs. They are going to need to be filled, and it would be a great experience."

Van Nest: What was your understanding, then, as to the role that Lloyd Cutler was filling?

Orrick: He was trying to perform one of the difficult tasks of the changeover from one administration to another. He was, in particular, working in personnel. So, I thanked him very much and said, "Lloyd, I guess it's snowing back there."

And he said, "Yes."

I said, "Well, I am out here in the hot sun with Marion and the Boones, and we are enjoying ourselves. Thank you very much, but no thanks."

So then, I did begin to think that perhaps I should go back, because I had spent many, many hours in the years previous trying

to convince other people to run for public office and then help them get the job. The more I thought about it, the more I thought, "If I am asking others to do it, why shouldn't I do it myself when I am getting pushed into it?" I thought further that if I didn't do it, someday when I was teeing off on the 16th hole at Cypress, I would jump off the tee, along with my golf balls, which usually ended up in the ocean anyway, for not having done this. But, then, that was just the middle of the weekend, and I didn't do anything after that.

Van Nest: Was there some follow-up from the administration?

Orrick: Well, there was. The next Monday, in my office, I got a telephone call from Byron White. Bear in mind, I had only met Byron once, and that was during the campaign.

Van Nest: What was Byron White's role?

Orrick: Byron White is now an Associate Justice of the Supreme Court of the United States. At that point, he was very much into the Kennedy campaign. He had been an all-American football player at the University of Colorado. He had had a Rhodes Scholarship. He had played professional football to make enough money to put him through Yale Law School. He played on the Pittsburgh Steelers and then played on the Detroit Lions. Each year that he played, he was the biggest ground gainer in the National Football League. He is now in the Hall of Fame of the National Football League.

Van Nest: And he was a man you barely knew back in 1960?

Orrick: That's right. And, as I indicated, he was a lawyer, and he actually had clerked for Chief Justice Vinson and had a good practice in Colorado.

So, he said, "We would like to see you back here."

"Well," I said, "Whizzer" -- that was his nickname, which he didn't like -- "I am right in mid-career, and I don't have a client who will pay my way to Washington at this time."

He said, "Well, I am just telling you that we want you. The least you can do is come back and look at it."

I said, "Well, thanks a lot, but if I do, I will give you a call."

So then, that really got me going. I talked it over with Marion, and I did go back there, just to see what was going on.

Van Nest: When did you go back?

Orrick: Right away, after his call, which would have been around January 5th or so.

Van Nest: What happened once you got back to Washington?

Orrick: I didn't quite know where to go. I had always had the idea that, if I ever went back there, I would like to work in the Pentagon where I had been during part of the war. I knew my way around there, so I went up to see Gilpatrick, who was a former Cravath partner and now Deputy Secretary of Defense, and whom I had met through Roger Kent.

He said, "What are you interested in."

I said, "Something like Secretary of the Army."

He said, "We have already got someone for that. How about Undersecretary of the Army?"

"Well," I said, "I will have to look at that, but it doesn't sound bad."

He said, "We can give you a job at about that level, and we would like to have you."

I said, "That is very nice." And I bade him farewell.

Then, I thought, "Well, I better stop by the Department of Justice and thank Whizzer for having me come back."

So, I did that about 7:30 at night. He came out and shook hands, and I said, "I appreciate everything you have done, but I have got an offer for a job, and I don't know if I will do it."

"Well," he said, "Maybe you better come in and speak to Bob Kennedy."

I said, "Okay."

So, I went into what was to be my new office in the Civil Division. Bob was looking out the window at the snow. He barely turned around, and he said, "We want you."

I said, "Thank you very much. I'm real pleased, but I have already got a firm offer of one job."

He said, "You have what? From whom?"

So, I told him.

He said, "You must have misunderstood him. You can't have a job like that."

I said, "Why not?"

He said, "Because I make those determinations, and you can't do it."

I said, "Okay. That makes it pretty easy for me."

He said, "We want you here."

I said, "Well, let me think about it. I don't know anything about the job here in the Civil Division."

Van Nest: Did he tell you then that the job was in the Civil Division of Justice?

Orrick: Yes, he did. Or Byron did on the way.

So, just before I left, I said, "I would like to have a little time to think it over."

And he said, "Take all the time you want, just let me know by 9:00 tomorrow morning."

I said, "Yes, goodbye." Then I talked at length with Marion, and we finally determined that I should take the job.

Now, that was a bigger decision than I had contemplated, because I had to get rid of that litigation in the office. It was all mine. And I had to pull my kids out of school with their roots bleeding and have Marion pack up this place or get it ready to lease, buy a house and arrange to get the kids in school in Washington. That was quite difficult.

The inauguration was the 20th, I think, or the 21st, and I got back there the day after and went down to my office. I remember walking in with Byron and Sal Andretta, the Assistant Attorney General in charge of Administration. My new office was on the third floor. I could hardly wait to see it. It was the size of a football field. My predecessor had committed the sin of turning it over to a large portion of the stenographic pool in the department. I made a note to myself that that would be the first thing we would change. Then, behind that, was another room, which was supposed to be a private office, that I used as a conference room.

So, I went in and sat down in that room and said, "Now I am here. What am I going to do?" I was responsible for 300 lawyers and all the civil litigation in the department, and I had no idea at all about how I would handle it. But, first of all, it was necessary to be confirmed by the Senate.

So, that afternoon, or the next day, I heard that many of my colleagues were going to appear before the full Senate Judiciary Committee, and I hadn't been invited to go along. I called Byron and said, "This is ridiculous. I am coming up, too."

He said, "All right."

So, we all got into one of the limousines there, piled in, and went up to the committee hearing. The room was jam packed. We took seats, and, I remember, I had to get my own seat, because they weren't going to deal with me at that time.

The Senators were all football buffs, or a lot of them were, and they could hardly wait to shake hands with Byron. "Whizzer, I saw you play in such-and-such a game." Byron was then, as he is now, very modest. But everybody was crowding around him. And then, a lot of them knew Archie Cox, the new Solicitor General, because he had been Counsel to the Labor Committee.

And the others -- Jack Miller, then, as now, was a well-known criminal lawyer in Washington. He had testified many times, and a good many of them knew Miller.

The Chairman, Jim Eastland, called them by rank and had them each give a little talk about himself. That was very interesting. I listened to it. I listened intensely for my name, and nobody called on me.

So, as they were about to adjourn, I said, "Mr. Chairman, if you please, sir, I am going to be in the Justice Department as Assistant Attorney General in charge of the Civil Division."

He said, "Oh, yes. We don't have your paper, Mr. Orrick, but we might as well do this now."

Van Nest: Who was chairing the meeting? Was it Senator Eastland?

Orrick: Yes.

So he said, "Tell me about yourself."

Well, I described the work that I had done in the San Francisco office, the mundane list of what every lawyer has to do, at least to pass the Bar exam. It seems to me I had done all of it. I told him I had drafted wills, probated wills, drawn contracts, drawn leases, litigated matters, drawn corporate resolutions, articles of incorporation, all that sort of thing.

Senator [Roman Lee] Hruska from Nebraska said, "It's good, at last, to hear that someone in the Justice Department is going to practice law instead of having these other fellows, who are going to spend their time on the Hill." Something to that effect. So then, I went and joined my colleagues and went back.

Van Nest: Were you confirmed then and there at the hearing?

Orrick: No. Indeed, I wasn't. They were confirmed by voice vote within two or three days. My name was off. As soon as I got back to my office, I got a call from Pierre Salinger, who was President Kennedy's Press Secretary from New York with whom I had had contact out here on various political matters.

He said, "Bill, a reporter just came in here and said you are going to be Assistant Attorney General in charge of the Civil Division. Who told you that?"

I said, "That was the understanding I have, Pierre."

He said, "Give me some background. The President has got to learn about this."

So, I gave him a brief background -- where I had gone to school and so on. After I had been at the hearing, why, out came a press release: "The Senators knew roughly who was the maverick."

Van Nest: Was there some embarrassment at the time that you had actually appeared before the Committee, before President Kennedy announced your nomination?

Orrick: Not for me. By then I was set. The job was mine, and that was going to be it. But I didn't want to throw my weight around in the Department until I was actually confirmed. So every day, I would come to work at 8:00 and stay there until 6:00 or 7:00, studying what was going on in the Division.

C. Running the Civil Division

Van Nest: How did you get on top of a job like that? What steps did you take to prepare to do it?

Orrick: Well, there's a rather detailed description in the Annual Reports of the Justice Department on what they did. The numbers are in there as the cases, and also the budget. And, I managed to make a few friends while I was waiting. I waited for a week. Then it got to be ten days.

So, I called up Byron and said, "Byron, what is going on?"

He said, "Well, you better come up here."

So, I came up, and he said, "The FBI Report shows that you were in the Institute of Pacific Relations."

I said, "Yes, I was indeed. And so was President Wilbur at Stanford and the First Lord of the British Admiralty," and so on. I went through the list.

He said, "The American secretary was a Communist."

I said, "I have learned that since I was there."

He said, "You haven't had anything to do with them since then, have you?"

"Not a thing. Not a thing. I don't even get their publications."

So he said, "We will see what we can do about it."

So then, in another week or so, I was finally confirmed.

Van Nest: Judge Orrick, before you set out on your new job, did you seek any advice from your predecessor?

Orrick: Yes, I did. Right after I found my office and was duly sworn in, I went to see Judge Warren Burger, who was then a judge on the United States Court of Appeals, and who formerly had been Assistant Attorney General in charge of the Civil Division. I went there to get his views about how the department should be run and see if he would give me any pointers on some of the personnel, and things like that.

He was most courteous. And, among other things, he told me that there were no communists in the division. I asked him, "How did you know that?" And he said, "When we first came, Attorney General Herb Brownell told us to go through our personnel, that is, everybody in the department, with a fine-tooth comb," to satisfy himself that there were no communists in his division.

And you will remember that that was right after the Truman days when the President appointed Judge [Howard] McGrath, from Rhode Island, as Attorney General, and told him to "clean out the communists" from the Department of Justice.

I said to Burger, "Did you find any?"

And he said, "No, sir. I looked through the entire roster, and I have talked to most of them, and I didn't find any. But I would go very slowly about firing any people."

And I said, "Why is that?"

"Well," he said, "Brownell also told us to see if we couldn't improve the lower range of our lawyers by finding the weakest and replacing them. I did that. And the five fellows that I fired always showed up at the Senate Committee Hearing Room, when I was being considered for another post, and talked at length about my bad character."

Van Nest: What was it that you did, when you first arrived at the Department as the confirmed chief, to try to get on top of the enormous flow of casework?

Orrick: The first thing was to get on top of the lawyers. So, when I was

sworn in, I had the ceremony in the big room that I have just described, and Justice Stewart, my good friend, swore me in. The Attorney General came down from his office up on the fifth floor. The room was packed with the lawyers who wanted to see, not only their new chief, but also the new Attorney General.

Van Nest: And the new Attorney General was Bob Kennedy?

Orrick: Yes. Once that was done, I called in my section chiefs, one by one, to ask them what they were doing. Then, I set up a weekly meeting of all section chiefs and set up a weekly meeting with each one, individually. That was all very helpful in getting on top of it.

But the next thing that bothered me was that every day in the division there were maybe 500 or 1,000 letters or more, for all I know, going out over my name, not signed by me, but going out over my name. I said, "I better see what they are sending out." So, I ordered the mail room to send me every piece of incoming mail and every piece of outgoing mail.

Van Nest: When was this, Judge Orrick? Early on?

Orrick: Oh, yes. Right after the confirmation. And I stayed there until midnight, until my eyes were glazed, until 1:00 or 2:00 or 3:00 in the morning, trying to read these carbon copies and so on.

Van Nest: What was the volume? It must have been several mail basketsful a day?

Orrick: They brought the mail in on an enormous trolley. That activity lasted about two days. I had no more idea about the job than I had before. Nonetheless, I did see some things that bothered me, and I made notes to talk to the section chief about them.

Then, I developed a report to the Attorney General. I told him that I wanted him to see every day what I thought were important things, and I didn't care whether he read them or not, but it would make me feel better inside if I knew that I had made those things available to him.

So, I did that. I would list any important callers that I had and all political calls and what important cases -- as I saw them coming across my desk -- I had looked at that day for one reason or another. He liked that and made the other assistants do the same thing. I was very pleased with that.

1. The New Haven Railroad

Orrick: I took a long time to get on the proper track for handling politically sensitive matters. I had two of them very early within the first month. The first one had to do with the bankruptcy of the New York, New Haven & Hartford Railroad. I got a call from the White House, from a guy called Mike Cohen, who said, "Bill, the President says put $50 million into the New Haven Railroad."

I said, "Do what? Run that by me again."

"The President says put $50 million into the New Haven Railroad."

"Where am I supposed to get the $50 million?"

He says, "You are over there. You should know that by now."

Wham!

Van Nest: Who was Mike Cohen?

Orrick: He was a Special Assistant in the White House. Power abhors a vacuum. Any power that the President doesn't grab for himself, one of those assistants will grab. It's just like the President having a big bundle of power lines, and if you are going to have any power, he has got to hand you a pair of thick rubber gloves, so you can hold that electric power. If you don't have a pair of those gloves, you might as well go home.

I called for the Head of the Bankruptcy Section, a man called Marvin Taylor, a good lawyer. He knew what he was talking about.

I said, "Marvin, I don't know anything about bankruptcy" -- and I might add, parenthetically, I know very little about it today -- "but they haven't even had a creditors' meeting, and don't I remember correctly that last November or December the Eisenhower Administration put $50 million into the New Haven?"

Van Nest: How had the New Haven Railroad gotten into the mess?

Orrick: Well, the case had been pending for perhaps six months. Nobody will ever know how they got into the mess, except through bad management.

Van Nest: But this was a major American private railroad which was seeking the protection of the Bankruptcy Court?

Orrick: Two of them. The New Haven and the Pennsylvania, and later on, the New York Central.

Van Nest: Was the Department of Justice a party to the proceeding?

Orrick: Yes. And, of course, the Interstate Commerce Commission. We represented, in the Department, the Interstate Commerce Commission.

I went upstairs to see Byron, who was my boss, and told him this story. It was about 5:30 or so, and he said, "Did the President say that?"

I said, "That is what Mike said."

He said, "That is not what I asked you. Did the President say it?"

"How am I supposed to know if he said it?"

"Well, you are supposed to be a lawyer."

"The only way I can find out is call him on the phone or go over to the White House."

He said, "Call him on the phone."

I said, "Very, very funny, Byron. When I was a kid, I was taken on snipe hunts. I am not doing it this time."

He said, "Call him up."

Byron is a big fellow. He wore short sleeves, and his muscles bulged.

Van Nest: Why were you so reluctant to call the President?

Orrick: For the same reason you would be reluctant to call him from here. You think twice about interrupting what he was doing. Turned out, he shouldn't have seen me. He should have been studying the Cuban crisis at that time. I would never have done it if Byron hadn't been right there. To this day, I remember the phone number: NA4-1414.

So, I picked it up. Feeling very foolish, I said, "May I speak to the President, please?"

"Just a minute."

Wham! I am patched into Mrs. Lincoln, who was his secretary. I took a deep breath and said, "Mrs. Lincoln, this is Bill Orrick over in the Civil Division of the Justice Department. May I speak to the President, please?"

I looked at Byron, and I was really losing my fear. It was turning into anger. She came back on the line. You could hear her talking. She put her hand over the speaker, and then she said, "Would you mind telling me what it's about, Mr. Orrick?"

I said, "Not at all. It's about the bankruptcy of these two railroads."

There was another little pause, and she said, "Well, the President would like very much to speak with you. Would it be convenient for you to come over now?"

I said, "Yes, Mrs. Lincoln."

So, I put down the phone and said, "Byron, you see what you have done?"

He said, "Come on. He said to come over there. He said get over there. I am coming with you."

Van Nest: What was Byron White's position?

Orrick: He was Deputy Attorney General. The number two man in the Department. He really ran the Department.

Van Nest: And the lines of authority were that you reported to Byron White, and he reported to Bob Kennedy?

Orrick: That's right. We didn't follow those lines precisely. A lot of times, Bob wanted to talk to us. But that was the chain of command.

So, we get to the White House, and we walk through the fishbowl. The reporters are there, and a couple of them look up. Then, we go into the Oval Office --

Van Nest: What is the fishbowl?

Orrick: That is where the press used to gather.

Van Nest: Just outside the Oval Office?

Orrick: Yes.

Then we were ushered into the Oval Office by Kenny O'Donnell, who was a great friend of the President and keeper of the door and acknowledged leader of the so-called "Boston Mafia." The President is seated at his desk. He has that great smile. He says "Bill, how nice to see you, and thanks for coming over."

Van Nest: Was this the first time you had seen him since the campaign days?

Orrick: No. I had seen him during the first few days in Washington. He had us over to the White House. I had been over there for Sunday night dinner and so on.

So, he said, "How do you like your office."

I said, "I think it's great, Mr. President. I can practice five-iron shots in there."

"Well, that is fine. Sit down here."

So, I sat at the table at his right, near the President. And Byron walks back to where the fire is blazing -- you see it in the newsreels -- and he warms his back and puts his hand behind his back, and here I am, talking to the President of the United States with no help from Byron.

So, I told him the story briefly, and he said to O'Donnell, "Kenny, get Mike Cohen."

Cohen comes in, and the President says, "Mike, what is all this about your telling Bill that I said to put $50 million into the New Haven Railroad?"

Mike colored right up to his eyebrows and said, "It seemed to me, Mr. President, to be in the best interests -- in the public interest."

The President said, "How?"

"Well," he said, "So-and-So is chief of the Brotherhood of Engineers. He was very helpful to us in the campaign, as was the then-president of the Pennsylvania."

The President thought a little bit and said, "Now, Bill, what is your recommendation?"

I said, "Mr. President, I don't know anything about the public

interest." And, parenthetically, in four and a half years, I never knew how to define the public interest.

"But," I said, "to me, it just seemed perhaps a little premature to pour another $50 million into that endless pipeline, when the Eisenhower Administration had done it only two months before. And there hasn't even been a meeting of creditors. You will never be able to follow it."

The President thought and said, "I think you are right, Bill. I will side with you."

Then, Byron comes up in time to say goodbye. As we walk out of the office, I felt like General [George] Custer must have felt at the Battle of the Little Big Horn, because I had those arrows in my back from every one of the Mafia waiting around.

Van Nest: Mike Cohen and his group?

Orrick: Mike Cohen and his group. Even Ralph Dungan, who was a good friend. And the result of that -- I spent a little time on it, because it meant two very important things to me.

First: When we got back to the Department of Justice at about 6:30, quarter to 7:00, every light was burning on the third floor, where I had my office. The lawyers were waiting there, because the Civil Division hadn't been in the White House maybe not -- certainly not in the last previous eight years. From then on, I had them eating out of my hand. It was just great.

The second reason is: A person is foolish if he wants to get an approval of something by not going to the top. And every other time, when some assistant from the White House called up and said, "The President says --", I would say, "Dan or Mike, whoever, may I speak to him, please?"

"No. He is busy. This is what he wants."

"Well, maybe he does. Maybe I will come over and wait around until he is free."

And I got almost no calls like that from him. In the Johnson Administration, where I had no clout at all in the White House, I always made the request, because I always wanted to be on record that I had at least tried to get to the top and couldn't get there, and then I wouldn't do it, wouldn't do anything.

2. The Bahia de Nipe

Van Nest: Did you have, in your position in the Civil Division, a fair amount of contact with the President?

Orrick: I don't know what a fair amount is. We continued to report on this to him. Then, the next time I had fairly close contact was when the United States Coast Guard took under tow the Bahia de Nipe.

Van Nest: When did the Bahia de Nipe incident arise, Judge Orrick?

Orrick: March of that year, 1961, is my recollection.

Van Nest: This was one of the early crises you had to deal with in the Civil Division?

Orrick: That's right. The Bahia was a Cuban ship. She was carrying a large cargo of sugarcane. The skipper wanted to defect from Cuba, so he navigated the ship into American waters where, as I mentioned, she was taken under tow by the Coast Guard and brought up to Norfolk.

Now, the administration was very much disturbed about this, because at that time, the Cubans were hijacking Eastern Airlines planes, for the most part, and bringing them into Havana, primarily to harass the United States.

Van Nest: What was the concern of the President with respect to the Bahia de Nipe? Was it perceived that this was a hostage attempt by the

United States?

Orrick: Yes. And he was very much disturbed about it, because he wanted to stop this rather senseless procedure. Every time they did something, we felt we had to do something. It just escalated.

So, the very moment, almost, that she dropped anchor at Norfolk, I got a call from Mac [McGeorge] Bundy. He was the then-National Security Advisor, they called them then, to the President. He said, "The President wants that ship sent back as fast as you can do it."

I said, "Okay, Mac."

He said, "He doesn't want anything taken off it, just nothing."

And I said "Okay."

So then, I started to find out what I was supposed to do. I learned then, for the first time, that the Coast Guard then was under the aegis of the Secretary of the Treasury. I called up Douglas Dillon, who was the Secretary, and told him about this.

He said "Well, I will call the Commandant, and then you call the Commandant and tell him what you want."

A few minutes later, I called the Commandant and told him under no circumstances was anything to be taken from the ship, and no people were to be allowed on the ship, and the ship should be towed back to international waters, and this as soon as possible.

Van Nest: At that time, was the Cuban crew still aboard the vessel?

Orrick: Yes. The crew was still aboard. The Admiralty Bar from the Gulf States through New England, had learned of the arrival of the Bahia. They descended like locusts on Norfolk and saw the Bahia, which had dropped anchor in the stream, being circled by a Coast Guard boat to ward off boarders. But the Admiralty Bar, and, indeed, most lawyers are creative, bright, and problem-solvers.

Van Nest: Why was the Admiralty Bar so interested in the Bahia?

Orrick: Because they all represented American companies whose assets in Cuba had been condemned and seized by Castro's government. They wanted to get hold of the sugar cane, sell it and at least partially reimburse their clients.

So, with this state of affairs, the leaders located a former Navy frogman. They convinced a deputy U.S. marshal to swear him in as a deputy marshal, and they gave him a notice of libel and told him, "You get on that ship and tack that on the mast."

So, this fellow swam to the ship in his diving suit and flippers. When the Coast Guard boat went by the anchor chain, he pulled himself up the anchor chain and sneaked on board the ship, tacked this libel on the mast, by which act he brought it into the gentle ministrations of Judge Walter Hoffman, who did not like the Kennedys at all.

Van Nest: Judge Walter Hoffman was a Federal District Judge in Norfolk?

Orrick: Yes, a very good one. He is a friend of mine. I have discussed this story with him.

So, the deed was done. That was done Thursday afternoon. On Friday morning, bright and early, I got a call from the marshal down there, or somebody, who said, "Now what do we do?" He told me about this, and I just said, "Oh."

I called up Mac Bundy, and he said, "I think you ought to tell the President about this."

You don't argue with Bundy, so I told the President. He said, "Bill, do the best you can, but get rid of that ship."

I said, "Yes, sir."

Van Nest: The President still wanted the ship out of the harbor and back off to Cuba?

Orrick: That's right. In the worst possible way. So, I then learned from one of my staff about the Tate letter. The Tate letter is a letter

that was written by Edward Tate when he was an Assistant Secretary of State addressed to a federal judge, making the "suggestion" that the ship was an international ship and "suggesting" that all proceedings against it be dismissed.

Van Nest: This was a letter, I take it, that had been used in prior years in similar cases?

Orrick: Yes, in similar cases. The federal judge was supposed to roll over and play dead. Well, anybody who knew Walter Hoffman knew that wouldn't work. However, I went over to the Department of State Saturday afternoon. I had the letter. I talked to the Secretary, whom I had known when he was a professor at Mills College and a part-time student at my law school, Boalt Hall in the University of California campus in Berkeley.

Van Nest: You are referring to McGeorge Bundy?

Orrick: No. I am referring to Dean Rusk. He was most obliging and gave me the letter. Then I went back to the department. I then called one of my young assistants and told him, "I want this letter to get in the hands of Judge Walter Hoffman just as soon as you can. I want you to go down to Norfolk, find him, wherever he is, his chambers, his house, his golf club, wherever, and give him that letter. In effect, serve him. Report to me every five hours."

Well, he went to the house, and they said Walter wasn't there. Then he went to the golf club. He wasn't there, and he wasn't in his chambers. My messenger called and said he didn't know what to do.

I said, "Keep doing the same thing on Sunday. If you haven't got him by 4:00 in the afternoon on Sunday, call me up again, and we will figure out something else."

By Sunday, he hadn't found him, and I said, "Well, I have got news for you. I just thought of what we can do. You get a sleeping bag some place and go to the clerk's office. Stay there throughout the night. When the clerk comes in in the morning, you be sure this letter gets into the file and gets into Judge

Hoffman's hands."

But a funny thing happened. The judge was not sitting that day.

Van Nest: On Monday?

Orrick: On Monday, right. This time, Leonard Boudin, who is a very good lawyer and counsel for many leftist organizations, including the Government of Cuba, argued for the Castro government. To make a long story short, Judge Hoffman listened to argument on this thing for what seemed an interminable time, about ten days. And, finally, he signed the order which we had suggested he sign, based on the Tate letter. Boudin had already arranged for an appeal to the United States Court of Appeals for the Fourth Circuit. We had an expedited briefing schedule and an emergency hearing, at which Boudin and I argued. The Court affirmed Judge Hoffman and found for the United States.

Boudin then petitioned the Supreme Court for a writ of certiorari. Chief Justice Warren was the Circuit Justice. The Court denied the petition. Almost the moment that happened, the Bahia weighed anchor, and the Coast Guard took her out in the stream and sent her on her way to Cuba.

Van Nest: Was a single item ever taken off the Bahia de Nipe?

Orrick: No, not a thing. She went back to wherever she was going.

3. Enforcing Civil Rights in Alabama

Van Nest: Early on in your career in the Civil Division, did you receive another call from the President or his men in connection with a civil rights problem in the South?

Orrick: It wasn't from the President. I learned about the problem talking with my colleagues at lunch. Once a week, Bob Kennedy would have the assistants to lunch up in the private dining room. We got to know each other very well. Byron White, Archie Cox, Burke Marshall, Louis Oberdorfer, Ramsey Clark, Nick Katzenbach, Lee Loevinger and Jack Miller.

Van Nest: Since you mentioned it, would you tell us what positions -- You have told us about Bobby Kennedy, of course, and Byron White. What positions did the other men hold?

Orrick: Cox was Solicitor General. Marshall was Assistant Attorney General in charge of the Civil Rights Division. Oberdorfer was Assistant Attorney General in charge of the Tax Division. Clark was Assistant Attorney General in charge of the Lands Division. Loevinger was Assistant Attorney General in charge of the Antitrust Division. Katzenbach was Assistant Attorney General in charge of the Office of Legal Counsel. And Assistant Attorney General Miller was in charge of the Criminal Division.

Van Nest: And these were men with whom you met on a weekly basis with the Attorney General?

Orrick: Yes. And so, we followed the progress of the civil rights group from their starting point, which I think was New York City, down into the South. As they got further into the South, at each bus stop they would be met by a gang of hoodlums who would take their property, which was not a great deal, but take their suitcases and just open the suitcases and let everything in the suitcase fall out on the highway. They hit people with tire irons and chains. And the freedom riders were not, as you may recollect, all black. They were both black and white. But this made no difference to these hoodlums.

Van Nest: What was happening at that time? Had there been some Supreme Court action that prompted the freedom rides in the South?

Orrick: I don't remember the exact dates of the Supreme Court cases. You will recall, the first overt civil rights act occurred in Montgomery, Alabama, when a black woman, Rosa Parks, insisted on riding in

the front of the bus. She was thrown off, and the blacks thereupon boycotted all the busses. They just didn't ride on the busses, and the busses went around empty. Then Lester Maddox had friends of his take pickhandles and roust blacks. Then there was the integration of the lunch counters. All these events resulted in litigation. I am not sure which was the first one.

Van Nest: In any event, the freedom riders were riding to the South en masse in an attempt to effectuate decisions by the Supreme Court that had given blacks the right to desegregated facilities?

Orrick: That's right. Now they wanted to desegregate blacks riding busses or trains and so on. One of the important events that was to take place was a talk which Martin Luther King, Jr., was going to give in a church in Montgomery. The last straw, so far as the Attorney General went, was when the bus riders arrived in Birmingham. They were thrown out on the streets, again, all their clothing and personal effects, everything, and beaten up. During the brawl, the Attorney General's good friend and special assistant, John Seigenthaler, was beaten up by some of these people and ended up in the hospital rather seriously injured.

At that point, the Attorney General and the President and Byron decided that they had to do something, inasmuch as the Governor of Alabama, Governor [John M.] Patterson, refused telephone calls from the President of the United States which the President made to persuade him to maintain law and order. The president then "federalized" the National Guard, the so-called Dixie Division. Police in the southern cities turned their backs on this unnecessary violence. The question for the Administration, the President, Bob, Byron and Burke Marshall was: what to do. They had to decide whether or not they would do what President Eisenhower had done in 1958 in connection with desegregating the school in Topeka, Kansas, namely, send the military (elements of the 82nd Airborne Division) to carry out his orders or to mobilize essentially civic agencies to carry out the law. They chose not to do what Eisenhower had done. Instead they wanted the Department of Justice to carry out the law.

The word went out to the United States marshals all over the country, to border patrol agents, to immigration and naturalization

service agents, to some prison guards in federal penitentiaries, to the alcohol and tax unit enforcement group, and others. They were ordered to assemble at Maxwell Air Force Base, which is near Montgomery. At that point we, being Oberdorfer and myself, along with Byron White and Joe Dolan, Byron's assistant, and Jim McShane, who was head of all the marshals in the country, went down to Montgomery Air Force Base.

Van Nest: How was it that you were selected to go?

Orrick: I don't think I was. It was Sunday morning, and I couldn't get one of them on the phone. So, I thought I would go down to the department to see why I couldn't get them. I went up to Bob's office, and he said, "They are going to Montgomery."

I said, "Well, if they are going, I want to go."

He said, "Go ahead."

Van Nest: Why did you want to go?

Orrick: Well, the team spirit kind of thing. My colleagues didn't know that much more about civil rights than I knew. And I knew, for sure, that they would have a problem with those people.

So, I went down. That was on Sunday afternoon. The first thing that we all did was to try to register this motley group of agents from the various agencies and swear them in as deputy marshals. Then, we tried to divide them into operating groups.

Van Nest: These were special FBI agents?

Orrick: No. These were the marshals, border patrol, alcohol and tax unit fellows, prison guards. The lot that I mentioned previously.

We were waiting there and getting reports from downtown what was happening. We had agents following the hoodlums, and there were many of them in their Ku Klux Klan suits. They surrounded the little hill upon which was situated the church where Martin Luther King was to address the parishioners and others.

At that point, Byron said, "Get those marshals into cars and get them down there." We got post office wagons, motor lorries off the base, everything that was free, loaded them with our newly created deputy marshals and sent them down to the church.

Well, a lot of them, as you might guess, had no stomach for this kind of thing. They would take their conveyance downtown to a beer parlor or someplace like that. However, McShane got enough of those guys out of the cars and got them up on the hill.

In the meantime, the hoodlums were throwing Molotov cocktails on the roof of the church, starting small fires. The church was jam packed. There were 800 people in that church. Some fighting ensued. It was getting pretty violent, when all of a sudden elements from the Dixie Division appear with their stars-and-bars arm patches, and flag, I might add. They took charge of the safety of the people in the church.

Van Nest: What was the Dixie Division?

Orrick: The National Guard Division.

Van Nest: From Montgomery?

Orrick: Well, from all of Alabama headquartered in Montgomery. To be accurate, I would say some elements of which were, but I don't know whether it was all or just some. We were satisfied that they at least looked as if they would keep law and order. We sent the marshals back to the Air Force base.

However, the Dixie Division Commander then decided that he would keep the blacks in that church all night. And it was hot. The church was right next to the neighborhood where most of the blacks were. They could have easily walked back to their homes without any violence.

So, about 3:00 in the morning, Byron called the commander, who was a lily white, one star general, and told him he wanted him to take those pickets away. The general said, "Well, if you want to discuss it, I will discuss a truce."

Byron told me, "Someone from the division will pick you up, and you can go over and see what the General has in mind."

Van Nest: By this time, had the mob subsided?

Orrick: They were gone. Just the division holding the blacks in the church were left.

Van Nest: Had Reverend King arrived?

Orrick: He was there.

Van Nest: Was he in the church?

Orrick: Yes, indeed, I believe he was.

So, about 4:00 in the morning, a major in the Dixie Division comes over in a jeep and picks me up and takes me over to their headquarters. I found out the major was a lawyer.

I said, "Major, what do you think about this, as a lawyer?"

He said, "You are just running into trouble. I am telling you that."

"Well," I said, "You passed the Bar exam, and you are sworn to defend the Constitution and the laws of the United States. What are you doing with this Hitler-type operation here?"

Needless to say, you don't win arguments like that. I didn't. We got over to the headquarters. To get where the General was, you had to go through the barracks. I was in the United States Army for four and a half years, and I knew GIs like the back of my hand. I went through there, and they all had their stars-and-bars shoulder patches and confederate flags all over. You couldn't find the American flag. Walking through that barracks, you would have thought I was a Russian prisoner. It was a miserable feeling.

I then was taken upstairs to a room where the general was having a conference with his officers. His uniform was spotless,

and his boots were polished. He was telling his officers the importance of having their boots well polished.

He saw me come in. I took a seat where I could be seen prominently, and he went on like this. I said, "General, my name is William Orrick, and I represent the Attorney General of the United States and the President of the United States. I want to hear from you what your plans are with respect to keeping peace in Montgomery."

He said, "That is none of your business."

I said, "It is very much my business. And if you don't have your people withdrawn from the streets and let the police get back on the job -- and they will have to be kicked back, but they will go back -- we will be the only peace-keeping force in Montgomery tomorrow. And if you want to keep us off the street, we will be more than happy to fight with you about it."

This was rather distasteful to him, as it probably should have been, and more so than a man with more control had. But I was fed up with him.

He said, "Well, I will consider it."

And I said, "Why don't you consider it for about five minutes and then give me the answer, because if it isn't, General [Creighton W.] Abrams has been alerted by the President himself to send in some real soldiers, and you can take these" -- I didn't say it. I wish I had said it -- "toy soldiers off the street."

He said he would do that, take them off the street. So, Monday was no violent scene at all.

On Tuesday, Byron was taking everybody back, and I was really happy to be leaving that place. I was one of the first guys packed. I was just waiting to get on the airplane.

He said, "Bill, you stay here in charge of the marshals."

I said, "Byron, I am a corporation lawyer from San Francisco. I am not a military commander."

He said, "Why don't you tell that to Bob?"

So, I got on the phone, and I said, "Bob, I just want you to know that my military experience is very limited, mostly intelligence work, and that I am really a corporation lawyer from San Francisco."

He said, "Can't you do it? And I said, "Well, of course, I can do it."

That was always the hallmark of the Kennedys. Anybody of whom they thought well could do anything. That was their theory. So, I stayed there. As I bade my colleagues farewell, I felt like General [Jonathan M.] Wainwright must have felt when he waved goodbye to General [Douglas A.] MacArthur as MacArthur left the Bataan Peninsula early in 1942. Saturday morning I had gone down to see Judge Frank M. Johnson, who was the United States District Judge in that area.

Van Nest: Had the week gone by peacefully?

Orrick: Yes.

Van Nest: Had Reverend King preached his sermon?

Orrick: Whatever it was, he preached Sunday night. He had long since gone. But one of the problems was in getting the FBI [Federal Bureau of Investigation] to dig up the witnesses. The lawyer who was going to try the case was Carl Eardley, who was the best trial lawyer in the department, I think. He was in my division.

Van Nest: What case was to be tried? Prosecuting those who had vandalized the freedom riders?

Orrick: No. We were to get a mandatory injunction ordering the Chiefs of Police of Montgomery and Birmingham, the Commissioners of Police of those places, to do their job and maintain peace and order on

the streets and to enjoin the various segments of the Ku Klux Klan from any violence. We had a good lawyer there, but we had no witnesses because the FBI would not dig up any witnesses.

So, I fussed about that. We had an open line with Bob, so I told him about it. This was about 11:00 at night. He told the President, and in no time, the President had talked to General Abrams and told Bob to talk to J. Edgar Hoover. Bobby did that, in no uncertain terms.

I was sitting there finishing up something, when all of a sudden two fellows appeared in front of my desk, one being the local Commander at Maxwell Air Force Base, and the other the FBI special agent in charge for Montgomery. I looked up at them with drooping eyelids, and the General said, "Mr. Orrick, I don't know exactly what you are doing down here, but if you will do me a favor, just don't call the President of the United States every time you need something. I have just had my ears burned off by General Abrams."

And the FBI agent said, "I just want to get straight with you, Mr. Orrick. Exactly what do you want?"

So, I had Carl give him a list of the witnesses and everything. We would never have been able to try the case without that kind of help.

Van Nest: Intervention from the President?

Orrick: Yes.

Van Nest: You went down to see Judge Johnson?

Orrick: Yes. I explained to him that I was just a corporation lawyer. He wasn't much interested in that. He said, "General, tomorrow morning you will be the only law enforcement officer in the streets of Montgomery."

I said, "Yes, sir."

"Well, do it right."

"Yes, sir." He really scared me.

Van Nest: Was your conversation with Johnson a week after all the hullabaloo?

Orrick: Yes.

Van Nest: And the problem still wasn't solved?

Orrick: Right.

Van Nest: And you were petitioning him for further power to enforce the law in Montgomery?

Orrick: That is precisely it. So, I kept thinking about those marshals. You know United States marshals. They are often a little bulky. Some are, and some aren't. And the border patrol guys are lean and hungry. The prison guard guys, all they want to do is bash somebody.

So, I thought "Well, I will see where they are." I called Jim McShane and said, "Jim, I am going to hit the panic button," we had set up, "and have the marshals come in here. I just want to see where they are."

He said "Aw, don't do that. You don't need that. They will be here tomorrow morning. You don't have to worry about it."

I said, "I know I don't have to worry about it. I just am worrying about it. So, you devise the system, and it's a question of either you ringing the bell, or I ring the bell."

McShane says, "I will ring the bell."

So, he rings the bell. We go outside, and we wait, and we wait, and we wait. Finally, two sleepy, overweight marshals, wearing helmet liners and gas masks, come around the corner and appear sheepishly in front of the car that they are supposed to go

in. Nobody else was there. I was scared, and I was furious.

So, I said, "Okay. Those are your marshals, McShane. Get me the military police."

He said, "Don't do that." I said, "Get me the MPs." I called up the head of the MPs and said, "Would you please round up every one of our marshals that you can find, here or in town any place."

Well, they had a golf course down there. There were some of them out playing golf. Then there was the non-commissioned officers' beer club. Our guys were swirling around and trying to get up to the bar. They found them every place.

Finally, they brought them in, after about half an hour, and I got up in front of them and gave them what-for. I told them I could promise them, every single one of them that had been appointed in this administration, that his time was up. He was going back to civilian life and that the President of the United States felt very strongly about it, and so did the Senators through whom they were appointed. I said, "Just believe me that I am going to do that."

Then they went away, and McShane said, "Do you think that did any good?"

I said, "If it didn't, it will be your neck, not mine. You are supposed to be in charge of those bums."

So, at 5:30 the next morning, every one of them was there, standing at attention by their car. We put them into cars, and then we went down to the courthouse. The Federal Court was located, as it is in many places, in a post office. I was deeply grateful for McShane, because he knew what he was doing, and I surely didn't.

So, he posted the marshals in strategic places around the courthouse and put up ropes. By 8:00 a.m., the hoodlums were present in trying to get through the ropes. And our marshals knew it was their job, and they were all there. So, they kept the

hoodlums out. McShane posted marshals up above in the gallery of the courtroom, so we had the place pretty well covered.

Van Nest: It was to protect the courtroom for the hearing in front of Judge Johnson?

Orrick: Yes. And to protect the lives of the witnesses and, indeed, the judge. The judge had been subjected to a barrage of Molotov cocktails on his home. His wife and children had been moved north. And he just didn't leave the job down there. He didn't have very enthusiastic marshals either. So, the room was filled with witnesses and with defendants. The defendants were represented by the cream of the trial bar of the South, all ABA types, well dressed and all.

Van Nest: Who were the defendants? These were prominent local police officials and the like?

Orrick: Yes. The police chiefs.

Van Nest: Bull Connor, for example?

Orrick: Yes, Bull Connor. And police chiefs of Birmingham and Montgomery, and the deputy sheriffs, wherever they were, and also the Ku Klux Klan. After the confrontation, that night, with the General and the FBI, we had gotten great cooperation. There were about fifty witnesses.

So, Judge Johnson, at 9:00 on the dot, comes in and says, "Any motions?"

The first lawyer gets up and says, "If the Court please, I move to have a change of venue. The atmosphere is charged here, and I move for change of venue to New Orleans."

"Motion denied."

"If your honor please, I move to sever my defendant. My defendant happens to be the Chief of the Ku Klux Klan, and it's unfair to him to have him tried with these other people."

"Motion denied."

"Your honor, I move to quash the subpoena served on my client, and I would like to be heard on this one."

"I have just heard it. Motion denied."

I counted. He denied 18 -- some of them very important motions -- in 22 minutes. And it impressed me, because, at that time, I had had a motion for summary judgment under submission in the United States District Court for the Northern District of California for four years.

Van Nest: So, Judge Johnson meant business, that was clear.

Orrick: You bet. Then, the next thing he said was, "The witnesses will be sworn." So, the bailiff swears each witness. Then, he says, "The witnesses are remanded to the custody of the marshal and to the upper gallery." The upper gallery is all blocked off, and it's hot as Hades, and there are the witnesses.

Then, "Call your first witness."

So, Eardley calls his witnesses, one by one, one after another. Finally, people are fidgeting, and it finally gets to be half past 1:00. The judge looks up at the clock and says, "There will be a brief recess of 20 minutes."

With that, the crowd lunges for the doors and for the bathrooms.

The trial was renewed about 2:00 p.m. and lasted with no intermission until 6:00 p.m., at which time the matter was submitted.

"All counsel and all defendants will remain here in this room."

So, Judge Johnson goes to his chambers and writes his order and has it duplicated and brings it down and reads the order.

He said, "That will be the order. And now, Mr. Marshal, you may serve each one of these defendants."

So, everybody was served.

Van Nest: And the order was to grant the TRO [temporary restraining order] and the injunction?

Orrick: Oh, yes. And he called it "a TRO merged into a preliminary injunction. In case there are any questions around here, it's a final injunction."

Van Nest: All in a day's time.

Orrick: All in a day's time. I saw him at the White House a year or so after I became a judge, when President [Gerald] Ford invited to the White House certain judges selected for him by Ed Levy, his Attorney General. And the idea was that he was going to have an opportunity to look over the judges and make his selection.

Van Nest: For the Supreme Court?

Orrick: For the Supreme Court, yes.

Van Nest: Did you reminisce with Judge Johnson about those incidents in Montgomery?

Orrick: Yes, I reminded him of the incident. He had it very much in mind. He said, "Bill, I will tell you something. Rule them fast, but rule them right." I said, "Well, that is what I learned."

Van Nest: I am looking at a newspaper article which appeared in The Virginia Pilot in September 1961. It appears at some time in that year you were out on the circuit, talking about a growing disrespect for law among the citizens of the country. Was that circuit and those discussions based on the experience you had in Montgomery?

Orrick: Yes.

Van Nest: What did you do? Did you actually go out and speak to police

officers and police associations and civic leaders and the like?

Orrick: Yes. Bob Kennedy thought that the story, just factually told, should be emphasized in matters of police education and things like that. A very good friend of his and the President's was Bill Battle, who was later Governor of Virginia. Bill Battle had said that all the deputy sheriffs and police in Virginia were holding a convention in Norfolk, and this would be a good time to reach them. I would have done anything for Bob Kennedy, but this really didn't make too much sense to me.

I said, "You think that is a sensible thing to do?"

He said, "Yes."

I said, "Okay, but I want to check all the facts."

He said, "Well, of course."

And I said, "I want to check the speech with you, since I am appearing there on your behalf."

"Of course."

So, I got a transcript of the hearings before Johnson, and I had newspaper clippings, and I wrote a totally factual account of what had happened to the freedom riders from the time they entered the first Southern city until the time they got over to Montgomery. I took it up to Ed Guthman, who was the public relations officer. He said, "That is the way I understand it."

And I showed it to John Seigenthaler, who had been injured in one of these fights involving the freedom riders, and he said, "That is the way I remember it." Guthman showed it to Bob, and I went down to make this speech.

Well, when I got there, before dinner, I talked to the police chiefs. I like to talk to police officers. We had a couple of drinks up in their room, and then we went down to the banquet room. There were one hundred and fifty people there, or something like

that. Maybe two hundred.

We had the dinner, which was fine, and then I got the introduction, and even that wasn't bad. You might say there was a scattering of applause. Then, I started in on my speech. There was a reporter there taking it down on a stenotype. I got going. Some people can feel things, and I can feel hostility. I just knew that this thing was bad. A couple of the people at the back of the room had left.

I was determined I would get it into that machine. I just gave up trying to get any applause or make a point out of this or that, even change my voice, or anything like that. I just wanted it in the machine.

So, I did that, and you could have heard a pin drop in the dining room when I got to the end. I had to go up to the chairman and lift his hand off the table and shake it and thank him for the visit and tell him I was sorry I had to leave early because I had a plane to take.

I walked through that long line of tables -- one of the longest walks I have ever taken -- out to the end, people scowling at me. They were there with their wives, of course.

They had a police sergeant there who was going to drive me to the airport. I gave him a big, "Hello, sergeant." And I got in the car, and we started for the airport, and he says, "Either you got a lot of guts, or you are crazy."

"Well," I said, "neither."

He said, "You don't know what would have happened to you. You are just lucky to have me driving the car."

I said, "How does that work?"

He said, "I came down here from Chicago. You know things are pretty tough up there. I have seen them take guys on the handball court, as they call it, and just take care of them. If it had

been one of these fellows from down here -- you have no idea how tough they are and how much you have insulted them. If it was somebody other than myself, you might well end up down in that ditch with a bullet behind your ear."

I said, "That may be so. My plane leaves at~ -- "

Van Nest: And on you went?

Orrick: Yes. So, we got there, and I thanked him profusely for the nice, safe ride I had had.

Van Nest: Did you accept any other speaking engagements of that kind in the South?

Orrick: No. I don't think there were any.

4. Impressions of John Kennedy

Van Nest: Judge Orrick, you had a lot of contact with President Kennedy, both in the Civil Division and later on in the State Department. What impressions did you have, or did you come away with, of John Kennedy as a man?

Orrick: I found him agreeable and friendly, thoughtful, gracious, with a strong desire to get to the bottom of any particular subject.

Just to give you an example, when I was in the State Department, the Secretary, Dean Rusk, his Undersecretary, George Ball, the Head of the AID [Agency for International Development] Administration, who was Fowler Hamilton, the Executive Secretary and myself would meet every morning at 8:00. By that time, we had read -- and I should add, parenthetically, so had the President -- the New York Times, the New York Herald Tribune, the Wall Street Journal and the night's cables and telegrams.

The President would pick up the phone and call either one of the people who was at that meeting or, more likely, someone who was sitting on the country desk. If, for example, there was a problem in Denmark, he might very well call the fellow who was the specialist in Denmark. He might even call the Assistant Secretary in charge of European affairs, and he might call any one of the substantive people in our meeting.

I mention this, because he was very much what they call, in the common vernacular, a "hands-on" manager or President. He wanted to be on top of everything. He was a voracious newspaper reader. He took advice and information anywhere that he could get it. His enthusiasm for his job carried down to the lower echelons in the government and certainly down to those of us who had been appointed to subcabinet positions.

For the most part, I am sure I would be accurate in saying we would do anything that he wanted us to do. He inspired loyalty and he was, himself, loyal to the people who were close to him in his administration.

Van Nest: The public image of him, then and today, is that he was a man with a keen intellect and one with great personal courage. Did those qualities hold true in the man you saw privately, or were they greatly exaggerated?

Orrick: Oh, no. I think they were very evident, manifested, for example, by the first Cuban fiasco, as well as Second Cuba, when it was his decision -- had to be -- to stop the Russian ships from carrying particular types of missiles into Cuba. It was his courage. In reaching down, as I mentioned, most of us had the idea that we were there to help move the world at least a quarter of an inch off its axis and make things better. And it was that kind of enthusiasm which made us work night and day and Saturdays and Sundays and do anything that the President indicated that he wanted to have done.

Van Nest: This idea of the Kennedy Administration as Camelot, and the idea that it was populated by the "best and the brightest" -- in the words of David Halberstam's book -- is that an idea that was felt through

the Administration, or was that something that is sort of an after-creation that doesn't correctly describe what you were doing?

Orrick: No. I think that it was very evident during the Administration. The President would entertain a great deal in the White House. Bob entertained in his big place over at Hickory Hill. It was a type of Camelot where all the knights were sometimes jousting with each other, as it were, but loyal to King Arthur, and a very few, very few even to Queen Guinevere. You could just feel that.

Van Nest: The Kennedy's, of course, are a political family and have long political roots in this country. Was John Kennedy someone who was always thinking about the political aspects of a problem, along with everything else?

Orrick: I don't know that. I can't answer it, because I didn't know him that well. I certainly didn't know him in the days While England Slept, his first book of any note.

It had always been, as I gathered, an understanding in the Kennedy family that Joe would be the one that they would get behind. After Joe, then along came John. After he was killed, along came Bob, and after he was killed, along came Ted. The family almost seemed star crossed. But the idea was -- and I don't know whether that is still true with Ted -- I would guess that it was -- that they would follow along and enhance the family name.

Van Nest: Did Kennedy display an awareness of the political side of the various problems that you talked about, how the people that mattered to him -- the politicians and others -- would react to the steps he took as President?

Orrick: Oh, yes. He knew his business very well, and he knew who was for him and who was against him and who he might be able to persuade. He had good people in charge of legislative liaison. He would often take them out on the Potomac in the Sequoia.

He would take influential Congressmen on the boat in the hot summer days, spring days, and he would have Dean Rusk along, or somebody from the Department, and they would talk. So, he was

very sensitive as to what his political obligations were.

Van Nest: Were there weaknesses in President Kennedy's style of management that you perceived, then or now?

Orrick: I realized at that time -- and I have no reason to change my mind -- that what is called management style -- which, incidentally, is almost an invention of the Iran Contra hearings -- is different in different managers.

If President Kennedy could be criticized, it could be that he was getting advice from all sides. In other words, there wasn't a neat chain of command, as President [Dwight D.] Eisenhower had, from the President to a Chief of Staff, Sherman Adams, to lots of other people reporting to him, and as [President Ronald] Reagan insisted upon.

Quite to the contrary, he knew the people. He would call them, or he would have Mac Bundy call them. He worked very closely with Mac Bundy. But the people down below would complain, because they didn't know who was going to write the telegram or what should be done and through whom they had to clear it. So, if there was any weakness, it was there.

5. The Matter of I.G. Farben

Van Nest: Let's go back to your service in the Civil Division of the Department of Justice. Did you become involved in some other notorious cases?

Orrick: The I.G. Farben matter had been pending since before the end of the War, and had been, I believe, once to the World Court or the International Court of Justice, and twice to the Supreme Court. Yet, when I was charged with carrying it on, to my astonishment, there had only been one deposition taken in the fifteen years it had been pending.

Van Nest: What was the case about?

Orrick: The case, essentially, was about the ownership of the stock of I.G. Farben. I.G. Farben, of course, was the great munitions manufacturing corporation in Germany. One group claimed its stock during the War was to be held in trust by the Union Bank in Switzerland. And then it was to be returned to certain people. Another group claimed that they represented the people who actually owned the stock and that the stock was to be sold, and they were to get the benefit from it.

Van Nest: Essentially, I take it, the stock was in the possession of the United States, pursuant to the winning of World War II and the seizing of those assets?

Orrick: That's correct.

Van Nest: The question was which parties were going to have the benefit of the return of this alien property?

Orrick: That's correct. And it was in the Office of the Alien Property Custodian. Byron decided we should merge it with the Civil Division, because there wasn't enough to have a whole other division. So, it came under my supervision, along with some smaller matters.

Van Nest: Did you get marching orders from Bobby Kennedy or the President with respect to what to do with this problem?

Orrick: No, nobody knew what to do with it. And I thought, like any lawyer might, that we either would litigate it, or we would settle it. There were two opposing parties. One was headed by a man who was known as Electric Charlie Wilson, who was the CEO of General Electric. He was represented by General Spofford, who was a member of the Sullivan & Cromwell firm. Opposed to them was the Swiss Bank, the head man being Mr. Adolf Schmidt. His lawyer was a Washington lawyer, Mr. John Wilson.

Van Nest: These were the two parties competing for return of the property?

Orrick: That's right.

Van Nest: Was this a big political issue as well?

Orrick: At the time when I had it, it wasn't. At least, at the start. I should say, however, that Senator Kenneth Keating, the then-Senior Senator from New York, had been pressured by General Spofford and the head of General Electric, Electric Charlie, to get those assets back into New York State.

Van Nest: What did you do about solving the problem?

Orrick: The first thing I had to do was find out what the problem was. So, I set up my own office in the building where they were and interviewed everybody who had worked on the case at some point. I read the briefs.

Just about that time, I began to get pressured by those two outside groups. Had they been on the same side, it would have been what the police call a Mutt-and-Jeff operation, that is to say, Electric Charlie Wilson was a well-known American businessman. He was very courteous and friendly and represented by one of the top lawyers in the country, never got irritated with anything and took it very smoothly.

Whereas, Mr. Schmidt was a Swiss, having all the characteristics of the Swiss that one doesn't like, being pompous, stubborn, impolite, aggressive to a fault. His lawyer, John Wilson, who was a well-known lawyer in Washington, had precisely the same characteristics.

So, when Electric Charlie and General Spofford came to see me, they were all sweet and honey. And so was I. I told them I had to find out where we were going, and there was lots to be done, and I would certainly keep them advised, "If you want anything else, just call up, and we will tell you whatever we can tell you."

Van Nest: What happened when you first met Schmidt in your office?

Orrick: Schmidt walked in dressed in his high stiff collar, black suit and rimless pince-nez glasses. He hardly took off his hat. John Wilson and I knew each other a little bit, so he knew something about me, how I might react. He didn't tell that to Schmidt.

Schmidt was most insulting. He said, "It's the United States that is cheating the Swiss government, and it's the rotten way in which this whole thing has been handled." He is walking up and down in my office, which was another big office, pointing to the American flag. "That means something to you; it means nothing to us."

Finally, he got to me. I said, "Mr. Schmidt, I don't know who you are or where the hell you came from, but you get out of my office right now. Nobody insults the American flag when I am in here."

He said, "Well, I take it back."

I said, "I don't want to talk to you. Goodbye.

"John, goodbye. When you can teach him some manners, I will be glad to talk with him. But I am not satisfied with his manners now, so goodbye."

The person who sent Schmidt here was Prince Radziwill, whose wife, Lee, was a cousin of Mrs. Kennedy's. And Wilson was told to let Prince Radziwill handle the whole thing. Wilson didn't like that, and neither did Schmidt.

Van Nest: Was that perceived as a gross political mistake, sending in a family member to talk to the President?

Orrick: It was conceived by me to be that way. I told that to Bob, and I put it in my daily report. And nothing ever turned out. They had another fellow, whose name I have completely forgotten, who was supposed to come in and negotiate for the Radziwills -- I just don't who that is.

Van Nest: What were the next steps that you took after these initial forays

with Electric Charlie and Mr. Schmidt?

Orrick: I went to Zurich for the purpose of seeing Mr. Schmidt and to get the lay of the land, so to speak. I called on him at his office, and we had a very friendly talk. I felt that I then knew what he was after, at least, and how he would be helped and who would help him.

Following my visit to Zurich, I tried to develop a proper way of settling the matter. I set up two teams, a litigation team and a settlement team. I determined that we would pursue the matter in the courts until there was a settlement, if ever, reached. Therefore, these two teams went down parallel tracks, each working to achieve its own purpose. On the settlement team, lots of time was spent valuing the property and working out different positions.

Finally, in May or June of 1962, I was prepared to settle it. In this connection, I added to my so-called settlement team a very good friend of mine, who was and is a very bright, able, successful businessman by the name of Prentis C. Hale. I visited Hale in California on two different occasions to get his expertise in staking out our positions.

Finally, we made our connection with Schmidt and his "team" and decided that we would meet them in Munich for the reason that the Civil Division had an office there. Hale and our local representative and I decided that we would have all the Swiss people whom they wished to bring come to the Munich office.

Schmidt was there with his lawyer, his Swiss lawyer, very decent, well-spoken, erudite gentleman, and two so-called vice presidents. We negotiated at some length and were able to make speedy progress, owing to the preparation which had been made on both sides. I remember distinctly that at 1:45 p.m. the Swiss had agreed to pay for the stock, all that we were asking, but refused to pay United States taxes to which we claimed we were entitled.

I was perfectly satisfied with the settlement at that time, and I nudged Hale. Hale stood up and said if that was the way the Swiss were going to negotiate, he didn't want any part of it, and

they could just forget it. As a practical matter, I had to get up and leave with him. But, when we got outside, I charged him with throwing away the best possible settlement that we could have gotten. Hale said, "Just take it easy, and you watch. They will come back."

So, we went down to the Four Seasons Hotel and had a nice lunch, a fine wine, and waited. At the other end of the room, the Swiss were having their lunch. We waited until they were through. We could have left the dining room very easily by a door near to our place, but we stayed there, waiting for what I thought would not happen, and what Hale thought would surely happen. And it did happen.

The Swiss came down to our table and said, in no uncertain terms, that they would, as a last gesture, pay the $17 million in taxes, and that that was the bargain. We could take it or leave it. So, Hale said, "We will call you tonight and let you know whether we will take it or leave it," and they went away.

I said to Prentis, "I am going down there right now. You aren't even in the government. You are here as a dollar-a-year man. I rank you, and I am going to tell them that we take it."

"Well," he says, "there might be something else there."

I said, "There isn't anything else there, Prentis. You can't even make anything else up."

To make a long story short, we took it. That was the best settlement of a case that I know of during the time that I was in the Department of Justice.

Van Nest: Was there some controversy about that case later on?

Orrick: Yes, there was. But, until we got to that point, we had to finalize the settlement with appropriate papers, and the Attorney General had to sign it. By this time, I was in the Department of State.

I remember so well, on New Year's Eve, about 5:00, getting a

telephone call from Bob saying, "I want to ask you about the I.G. Farben case."

I said, "Well, go ahead."

He said, "I think it's better if you come over here, because there are some people that take exception to your position."

I said, "That can't bother me, Bob. I am in the Department of State, and you are the Attorney General. You make the decision."

He said, "Would you come?"

I said, "Yes."

Van Nest: Who had assembled?

Orrick: The then-Deputy Attorney General, Nick Katzenbach, plus two members of my so-called trial team. There was nobody representing the settlement team. The trial team were bitterly critical of the settlement. I have seen that among government lawyers before, particularly when they have worked on one case for a long time and then it's settled out from under them. So, I didn't blame them, but I did blame Katzenbach for not putting it correctly to the Attorney General.

Van Nest: Had Katzenbach not given Kennedy all the facts he needed to evaluate the settlement?

Orrick: I didn't think he had. I didn't think he knew enough about it, and I still don't.

Van Nest: Did the matter remain settled?

Orrick: The matter remained settled. I told Bob, "I can't do anything further. My strong suggestion to you is settle it. It's something that is part of your job. It was part of the job of Attorney Generals going back to the end of the War, including Tom Clark, and it would be irresponsible, in my view, not to do it."

So he did it.

Van Nest: Did this later become a source of political controversy for Bob Kennedy?

Orrick: Yes, it did. He was running for United States Senator from New York. There were many Jews in the proposed constituency. His opponent was Senator Keating, whom I mentioned previously. Keating campaigned on the issue that Kennedy had been outmaneuvered by the owners of I.G. Farben, who were, in the end, related to the Germans who put their Jewish relatives in the furnaces.

I was in Europe in the middle of October with some State Department problem, when I was awakened in the middle of the night by Bob asking me if I could obtain several important documents relating to the case and get them over to him promptly.

Through happenstance, one of the men who worked on the case, by the name of Henry Ford, was our Consul General in Frankfurt. I called Henry and asked him if he could tell me where those documents were. For some reason, Henry had them with him.

I said, "Will you kindly send them by courier to Senator Kennedy in New York City?" at whatever hotel he was staying. He did that, and the next night, when Keating made his charge, Bob was able to refute it by reading from these documents, showing that Keating didn't know what he was talking about.

6. Putting the Longshoremen Back to Work

Van Nest: Was enforcement of the Taft-Hartley Act within the jurisdiction of the Civil Division?

Orrick: Yes, it was. The first time I went to the trial court, while I was Assistant Attorney General, was to represent the government in a Taft-Hartley action which had been brought in New York.

Van Nest: What did that action involve?

Orrick: That action involved invoking the Taft-Hartley Act, which mandated a ninety-day hiatus between management and labor if a strike would be damaging to the national interest.

Van Nest: In this case, the longshoremen were refusing to load cargo on route to Cuba. Why was that? Was it a political refusal to deal with Cuba?

Orrick: Yes. As you know, the union from time to time, as indeed do city councils, try to make foreign policy using a strike. The job, besides entailing getting affidavits from the Secretary of Defense and other people involved with the well-being of the United States, was going up and arguing the point in Federal Court.

Van Nest: Did you run up against Mr. [Leonard] Boudin again in this case?

Orrick: Yes. Mr. Boudin was in the case. Arthur Goldberg assisted me in understanding what the labor unions wanted.

Van Nest: Was Goldberg a lawyer at that time?

Orrick: He was Secretary of Labor at that time. Since it was the first Taft-Hartley for this administration, the President wanted the persons responsible for the results to do the job themselves, rather than some staff person. We took the President's plane, the "Caroline." It was to stop at Newark Airport in order to get the views of Judge Rosenman, who had been General Counsel to Franklin D. Roosevelt.

Arthur Goldberg said, "Bill, you are going up to Hyannisport, of course."

I said, "No, I am not. I am going to be in court."

He said, "The President will want you up there when he announces this decision on the television."

I said, "That is your job, Arthur. That is not mine. I am going to do what I consider to be my job, namely, make the pitch in the United States District Court."

So, when Judge Rosenman met us on that very rainy evening out on the tarmac, I asked if I could ride in with him, which he said I could, and I said goodbye then to Goldberg.

Van Nest: Rosenman had been counsel to Roosevelt during his administration?

Orrick: Yes. And I had always wondered what President Roosevelt was doing during his campaign in 1940, when in October of that year, he came to Boston and announced, "Not one of our boys shall leave these shores." At the time that he said that, destroyers were carrying a division of Marines up to Iceland, and the President had promised a total of fifty destroyers to England.

So, when he got back to Washington, he called in Judge Rosenman and said, "Sam, you heard my speech, and you know that the Marines and the fifty destroyers are on their way to England."

And the judge told him, "Yes, I know."

"What shall I do?"

Judge Rosenman advised the President of the United States, "Deny you ever said it."

Van Nest: Was Rosenman reluctant to tell you this story?

Orrick: No, he wasn't. I had heard this story, but I was very pleased to get it absolutely straight from Judge Rosenman.

Van Nest: What finally happened with the longshoremen?

Orrick: We tried the case all day. By "we," I mean Bob Morgenthau, who

was U.S. Attorney then and is the District Attorney for Manhattan at the present time. We were up against Leonard Boudin, who represented the longshoremen. Chief Judge Ryan presided over the case. There was testimony from numerous persons that there was no problem involved with the national security.

Finally, at 5:00, Chief Judge Ryan recessed the court and ordered us to remain there until he could get his order out. We did that, and when he came back, he brought the order enjoining the strike. His clerk handed a copy to counsel on each side. Boudin left the courtroom in a hurry, and Morgenthau grabbed me by the coat and said, "Let's go."

I said "What's the hurry? We have got the injunction."

"Don't argue. Just come with me."

We ran out and followed Boudin, who was running to the parking lot. Morgenthau's car was near Boudin's car. Boudin pulled out of the parking lot in a hurry, and we followed closely on his heels. As we were going up the East Side Drive, Morgenthau told me, "It's very important to find out where he is going. I think he is probably going to New Haven, to the home of Judge Charles Clark, and get a stay."

Van Nest: Did Morgenthau say why he thought Boudin picked Judge Clark as a place to rest in the Second Circuit?

Orrick: He didn't. But he had apparently made some determination from the Clerk of the Second Circuit that he was the one who was closest to New York. They were all over the place. We got on the road to New Haven, Connecticut, We were going about seventy or eighty miles an hour. Morgenthau was obviously relieved. He said he was going to Charlie Clark's home, and that is exactly where we went.

We arrived there about 8:00 in the evening. Boudin rang the bell, and Judge Clark came to the door in his pajamas with a bathrobe on. Boudin told him what we were doing. He said to come back in about twenty minutes, and he would hear us. So, we

came back in twenty minutes, and Mrs. Clark had set up card tables on either side of the room. The judge sat in front of the fireplace, with a little table in front of him, and listened to oral argument. It didn't take much preparation. There was only so much that could be said. Boudin said it very well.

And then I got up -- I think he gave us fifteen minutes each -- and explained to him the military necessity, as supported by our affidavits. Clark then told us to come back in an hour. When we came back in an hour, he handed us a copy of his order affirming Judge Ryan.

Van Nest: I take it the longshoremen went right back to work.

Orrick: The longshoremen went back to work the next morning.

Van Nest: Did you have occasion to argue in the Supreme Court?

Orrick: Well, I enjoyed arguing before appellate tribunals, and I had the greatest client in the world, the United States. Justice was always on our side, at least so I thought. I argued in different circuits -- the 2nd, the 4th, the 5th, the 6th, the 9th -- and the Circuit Court of Appeals for the District of Columbia.

Our division had a case in the Supreme Court, and I wanted to argue it, because, up to then, I had never had an argument in the Supreme Court. It involved interpretation of the Federal Tort Claims Act. It wasn't too difficult to get on top of the facts. So, that I did.

Van Nest: Did you have a lot of advance notice?

Orrick: They always tell you in what period your case will be heard. The Supreme Court then, and I think now, holds arguments for three weeks on, and one or two weeks off. Maybe three weeks off. I am not sure.

But I watched my case on the Supreme Court calendar move slowly to the top. As it got near, I communicated with the clerk and told him I needed some lead time and would they hear it on

this particular hearing period. And the clerk said it looked like it would go over to the next one.

Then, in a day or so, he called me back and said, "Maybe you better come up here."

I said, "Why?"

He said, "They might reach it this afternoon."

Van Nest: What time was it?

Orrick: I turned white. It was about 11:30, or something like that, I guess. The Government Counsel always wears a morning coat and striped trousers. I called up Marion and asked her if she would please bring them down to the department. During the time that I was dressing, I had the young lawyer who had been very helpful in my preparation come in. We started to go through the whole matter again. I then took a car, a government car, up to the Supreme Court.

A requirement of the Court is that counsel in the next case shall be seated in assigned seats before the next case begins. So, I took my proper position, looking at the brief that I was to argue and looking at the Court clock.

In those days, the Court listened to oral argument from noon until 2:30 and from 3:00 to 4:30. As the hands of the clock moved during the hour that I was there to 4:30, I got more and more nervous. I was beside myself as it got to 4:15 and then to 4:20, because Chief Justice [Earl] Warren thought nothing of having counsel commence an argument at, say, 4:20 or 4:25 and then shut them off at 4:30. When they came back three weeks later, they took up where he had left off.

So, I wanted more time and, happily, counsel who was ahead of me was being questioned by Justice [Felix] Frankfurter. When that happened, I knew we would be there through 4:30.

I was first on the calendar at the commencement of the next three-week period.

7. The Appointment of Federal Judges

Van Nest: We have talked a little about your service in the Civil Division, about judges and the judges you appeared before. Was it also the job of the Civil Division, or part of your responsibilities as an Assistant Attorney General, to help the Administration select the judges it was going to nominate and send up to Capitol Hill?

Orrick: Yes. The duty was imposed upon us by Byron White. Customarily, the appointment of District Court judges and, indeed, Circuit Court judges, was patronage for the Senators. Then, when the names were sent to the Department of Justice, the Deputy Attorney General would give the names to a committee of the American Bar Association, which would make an investigation as to the candidate's qualifications and personal character and then report back to the Department of Justice.

Van Nest: Did Byron White institute a different procedure during the Kennedy Administration?

Orrick: Well, he instituted an additional procedure, it might be more properly called, for the reason that Bob Kennedy wanted endorsements from a group other than the American Bar Association.

Van Nest: Why was that?

Orrick: I don't think that he really trusted many of the people in the American Bar Association, because their publications at that time and selection of judges was on the conservative side. So, what Byron had us do was to assign to each Assistant Attorney General a section of the United States, with the idea in mind of getting

additional background information on these candidates.

Coming from the 9th Circuit -- I had the 9th Circuit -- what I would do was to call lawyers in the different cities. By this time, I knew lawyers, at least in the main cities in the Circuit, and asked them for their opinion of the particular candidates. That way, I would get an independent reading and transmit that to Byron White.

My colleague, Louis Oberdorfer, did it for the South. Burke Marshall did it for the Northeast. I think Loevinger did it for the Midwest. The results were good.

Van Nest: Was the idea to get some political input into the process of selecting judges?

Orrick: No. The idea was to get independent views of an attorney with respect to the character and ability of the proposed candidate. The politics in this part of the process had no place at all.

Van Nest: Were the Kennedys concerned about the political background of the people they were sending up to the Hill?

Orrick: Yes, very definitely. That is inevitable. Byron and Bob didn't always take our suggestions, for that very reason. For example, Judge Sidney Cox was the roommate of Senator [James] Eastland. I should say, the college roommate of Senator Eastland. It was well known that Judge Cox was violently opposed to every aspect of the civil rights program as it affected blacks, and that he would vote against any and all efforts to integrate blacks.

Nonetheless, Senator Eastland, then-Chairman of the all-powerful Judiciary Committee, made it abundantly clear to Bob and Byron that he wouldn't be recommending any persons to the United States Senate for nomination to the post of United States District Judge or, indeed, Judge of the Court of Appeals until Cox had been confirmed.

Van Nest: What review came back from the In-House Committee?

Orrick: That he was the worst anti-civil rights type in the South.

Van Nest: Was he eventually appointed?

Orrick: He was eventually appointed, and the appraisal of him was absolutely true. I think he is still on the Bench. Whether he has taken senior status or not, I don't know.

Another aspect of this was Charles Carr, a person appointed Judge from California.

Van Nest: That was within your district, your region?

Orrick: That was very much within my region. And I got many accurate estimates of his character. Not only did he not have a judicial temperament, he didn't like the law. He was arbitrary and nasty. But here again, Senator Clair Engle, whose patronage it was, said that he owed Charles Carr and that he wouldn't make any recommendations until Carr was appointed.

Van Nest: Was Engle pretty clear about the reasons for his support of Carr?

Orrick: Yes. Carr had supported him financially, substantially, in his prior campaigns for the United States Senator. That was politics pure and simple. Carr was appointed, behaved in the future as he had in the past. Senator Engle, who was a first-rate senator, then appointed many first-rate judges.

Van Nest: Was it your view then, or your view now, Judge Orrick, that there is something wrong with the appointment process of judges in this country when someone can demand or insist on appointment of a judge purely because he had been a financial supporter?

Orrick: Yes. It, of course, violates the tenets of Alexander Hamilton, as they are expressed in the 78th Federalist, namely, that federal judges should be persons of integrity and ability, subject to no other power, and should serve during good behavior throughout their lifetimes.

Many different plans of appointing judges have been

considered over the years. One plan that is popular is the so-called Missouri Plan where the Bar Association furnishes the Chief Executive -- in that case the Governor, of course -- with the names of fifteen persons whom the Bar Association thought would be able to fill five positions.

Van Nest: Wouldn't that be a better and a less political way of doing it?

Orrick: I don't think so. I think all that would happen is it would move the politics from the state senators or the legislative body to the Bar Association. And over the 200 years which have elapsed since the signing of the Constitution, there are very, very few federal judges who have been impeached. There are not more than eleven or twelve out of the whole number. I think that this is just as good as you can get it.

Van Nest: You don't think there is a better way to do it?

Orrick: I don't think there is. Politicians are politicians, and people are people, and they differ from each other. I think this is the best way. We don't have an Athens where Pericles could appoint the judges.

8. Impressions of Bobby Kennedy

Van Nest: Judge Orrick, before we leave your service in the Civil Division, let's reflect for a minute on your relationship with Bobby Kennedy. I take it you saw quite a bit of Bobby in a work context. Did you see him socially as well?

Orrick: Yes. Bob and Ethel gave a good many parties at his lovely estate called Hickory Hill, which is in McLean, Virginia, to which we were invited and always attended. In addition to that, he would have the Assistant Attorneys General and the Solicitor General for lunch every week in the dining room, during which we would discuss

current problems and mutual problems. Then, from time to time, he would have us come to Hickory Hill for a discussion of the problem.

Van Nest: Can you think of any examples of heated topics that you got into with Bob Kennedy and the rest of the group, either at Hickory Hill or in the office?

Orrick: Yes. We got into a controversy over introducing in the Congress a wiretapping statute.

Van Nest: Was Bob Kennedy in favor of that?

Orrick: He was very much in favor of it, but he wanted the statute to be as carefully drawn as possible. I recall one day, after we had had a swim and a great lunch at Hickory Hill, we sat on the terrace and discussed this matter. Byron had given us warning that the Attorney General wanted us to discuss it. All I had done by way of preparation, knowing nothing about wiretapping, was to read a couple of Supreme Court opinions, the Olmstead opinion and the dissent in the Weeks opinion.

Van Nest: What was the Attorney General's position on it? Was he a very strong proponent of wiretapping?

Orrick: He was a very strong proponent of wiretapping. He had had the experience of dealing with the Teamsters before the Senate Labor Committee, where he was counsel, and the Mafia concerned him a great deal. So, to get information, he thought that this method was absolutely essential.

Many of my colleagues had had experience with it, as Solicitor General Archie Cox had argued cases with respect to it. Jack Miller, who, incidentally, was a Republican, and head of the Criminal Division, had had a great deal of exposure to it, inasmuch as he had represented the rank and file of a union -- it might have been an off-shoot of the Teamsters Union -- against the trustees who were dissipating the pension funds. Burke Marshall had some exposure to it through the activities of the FBI in connection with the surveillance of certain persons in whom Burke was interested.

Van Nest: What was your view?

Orrick: My view was that, as Justice Oliver Holmes said in the Weeks case in his dissent, it was a "dirty business." I had had no exposure to it. So, when it came my turn to speak up -- and Byron would go right down the line -- I said, "I have had no experience at all with it. I am a corporation lawyer from San Francisco."

Then, he would pin me down. "Would you vote for it or against it?"

I said, "I would vote against it on the basis of this opinion. It's a dirty business."

Well, that got Bob Kennedy into action. He came down to the place where I was sitting and said, "Suppose one of your children was kidnapped? Would you be against a wiretap?"

I said, "No, Bob, of course I wouldn't. But hard cases make bad law."

"Well, he said, "suppose it was your father who was being blackmailed or some such thing? Would you be opposed to it then?"

I said, "Just pragmatically, no. And again, hard cases make bad law. But I am not the person on whom you should rely for advice. Here are colleagues who have all had experience with it."

Well, he made me rather uncomfortable, because he didn't move off for quite a while. He was rather irritated that I was the only one against it.

Van Nest: And, finally, what course of action was taken?

Orrick: The wiretap statute was introduced, lobbied through and became law. It's been amended a number of times since.

Van Nest: It's well known, I guess, or widely believed, that Bob Kennedy had

an obsession with the Jimmy Hoffa case. Was that something he shared with you?

Orrick: Yes, he did. In the Jimmy Hoffa case, the Teamsters had bribed the jury in a criminal case, and they found Hoffa not guilty. There was enough evidence so that the case could be tried for obstruction of justice.

Van Nest: Did Bob Kennedy share with you his views or concerns about Hoffa?

Orrick: Yes, he did. He said, at one of our meetings, "Can we get at him civilly?"

I volunteered, "Why, of course, you can. Get him under agreements or some such thing."

And he said, "How would you begin?"

I said, "The first thing I would do is to take his deposition."

"Well," he said, "how do you do that?"

I said, "Well, you pretend you are Hoffa, and I will be the lawyer."

"All right."

So, I was sitting at the end of the table, and he was sitting at his end.

Van Nest: This was at one of the luncheon meetings?

Orrick: Yes, one of the luncheon meetings.

So, I said "What is your name?"

And he said "J.R. Hoffa."

I said, "Will you spell that please? It sounded like Hoover."

And I got a little laugh from the fellows.

I said, "What is your address?"

He gave me the address.

"All right. Now, on the night of June 30th, Mr. Hoffa, when you -- "

And we went on for about five minutes like that. He was highly amused and, I think, educated to a certain extent.

Van Nest: Was there consideration given in the Civil Division to a civil action against Hoffa?

Orrick: No. Eventually, they got Hoffa, and he did some hard time and then was murdered.

Van Nest: What impressions did you come away with, after the time you spent with Bob Kennedy, about him as an administrator of the Department of Justice?

Orrick: He was a very good administrator. After we had been there a week, he said, "I want to know what happens in here. I walk around, everybody seems busy. So, it doesn't make any difference if we are here all day or not." A couple of days later, right after his lunch, he and Byron and I went out to the Chevy Chase Club to play golf. I felt like a kid playing hookie, because never did I dare, even as a partner in a law firm, leave during the middle of the day to play golf.

We talked about what you can do in the division. Bob was a good manager. We were making these daily reports, and he was keeping his fingers on that, and then, of course, he had many other duties, among them being a member of the National Security Council. But, through the device of that daily report that I mentioned, he knew what was going on in my division.

What he would do is, if he saw an item that interested him, he would write, "I want to hear more about this," and put RFK

there, or "Did you check with somebody on this?" So, he worked at that, together with a myriad other duties of Attorney General. I think he was a good administrator of the department.

Van Nest: Was he a political creature, in the sense that he asked you from time to time to take steps, or act in cases, on political grounds?

Orrick: Never ever. He was bound and determined that politics would not play any part in the operation of the Department of Justice, and they did not. For example, a very forceful example, he forbade us from employing anyone in the Division based upon his or her political affiliation. This, of course, was directly contrary to what most attorneys general have done: Sweep out the top people from the other party. But not for Bob. That actually made it somewhat difficult for me to get rid of some fellows in particular.

Van Nest: Did you have a lot of Republicans in the Division?

Orrick: If we did, I didn't know it. I literally didn't know the political affiliations of anyone in our Division. And this was the way that Bob wanted it. So, it didn't bother me.

Van Nest: Was there any sort of hiring clearing house in the Department of Justice through which you had to check sensitive hiring decisions?

Orrick: No.

Van Nest: What other impressions did you gather about Bob Kennedy, as a man, during the period of time that you worked closely with him in the Department of Justice?

Orrick: He was intensely loyal to his country, to his brother and to people who knew him well. He had good judgment. He was a man, as far as I know, of the greatest integrity. He was a hard worker.

Van Nest: What about temper? Was he hot tempered?

Orrick: No, no. If he was, I never saw it. He wasn't one of these people that laughs and smiles all the time. He was serious. He had a serious job, and he knew it and understood it. And, of course, he

was a great help to his brother.

Van Nest: Was he sensitive to the fact that there was a lot of criticism of him, and of the President, for having put him in the Department of Justice without much experience?

Orrick: He knew that. He was very much aware of that criticism, and he would just laugh at that. As the President said, when someone asked him that question: "The reason that I made Bobby Attorney General was because I wanted him to get some experience before he had to practice law."

That is about the way that Bob took it. He drew the fire normally leveled at the President. And in that way, he was roundly criticized for many things that he never did.

D. Life in the Department of State

Van Nest: There came a time when you left the Civil Division, did there not?

Orrick: Yes.

Van Nest: How did you come to find out about your new position?

Orrick: I got a call from the White House that the President wanted to see me at 2:00 that afternoon. I thought he wanted to see me in connection with the Billy Sol Estes case, a big fraud case in which the government was involved.

So, I got the file on Billy Sol Estes and boned up on it and went over to the White House. The President said, "Bill, I would like you to go to the Department of State as Deputy Undersecretary for Administration."

I said "Well, this comes rather fast, Mr. President. But I came

back here to help, and if that is where you want me, I will be glad to do it. But," I said, "I have to have your backing to the extent that I can call on you if I have any problems over there."

And he said, "Absolutely."

Van Nest: Did he tell you what he wanted you to do?

Orrick: Yes. I asked him what some of the problems were that bothered him. He said the problem that bothered him most was the fact that foreign service officers were so gun-shy, as it were, of the White House, and that they always felt that the White House left them out of things. He said, "One of the things I hope you will do is to see if you can raise the morale of the foreign service." And I said I would try to do that.

Then, when I went back to the Department, I went up to Bobby's office and said, "What is the idea of letting me go? It's like the Giants trading Willie Mays. I am a part of this team here."

Bob said, "Well, can't you do it?

I said, "Yes, I can do it, but I just don't like being traded out of hand."

"If you don't want to do it, I am sure we can get the President -- "

I said, "Bob, I said I would do it."

And he said, "We need you over there. There are things we were thinking of, country teams and whatever. And we want to work through you."

I said, "That is fine." So, I walked over to the State Department to see Dean Rusk. I told him that I felt privileged to be able to work for him in the department. Everybody knew I had no experience in the program, substantively or procedurally, in the Department. But I thought I could get on top of that pretty well and do it, if I had the privilege of meeting with him once a week

for at least a half hour or an hour.

I said, "Otherwise, I won't be sure of what I am doing. But I will go ahead and run my part of the show -- what I conceive it to be -- if I can tell you once a week what I have been doing, and you can tell me to stop that or whatever." And he readily agreed to that.

1. Dealing with the Bureaucracy

Van Nest: What part of the show were you to be running? What was your specific assignment?

Orrick: Deputy Undersecretary of State for Administration (now called Undersecretary of State for Management). It was the care and feeding of State Department personnel, which included civil servants, as well as foreign service officers, and the recommendations for the appointment of ambassadors and, literally, everything procedurally, including things like communications and security, just the whole thing.

The person whom I was succeeding was Roger Jones, who had been Chairman of the Civil Service Commission. Everyone thought he would be ideal at the job in this big, massive, running bureaucracy. He didn't catch it at all. And the bureaucracies go on from year to year. It doesn't make any difference whether they have leadership or not. But leaders can at least do something.

Van Nest: I am looking at an article that appeared in The Plain Dealer in July of 1962. The title of the article is "Orrick Cuts Trouble in State Department." It's by John Leacacos, who was a long-time student of State and covered it for the newspaper. It says in the article that the big advantage you had, or would have, is that, "Orrick is an insider with direct access to the President's ear, if necessary."

Was that, you think, the way you were perceived at State when you came in?

Orrick: Yes. And to the envy and intense dislike of some of the people with whom I was associated, including George Ball, who was Undersecretary of State, and was a very bright man, wrote well, and a very courageous man. (He was the only person in the department that stood up to President [Lyndon B.] Johnson with respect to the Vietnam War.) I had admired him, but George and I didn't get on very well. George was concerned that I was cutting his communications to the White House, which I wasn't.

Van Nest: Did you think that the impression of you as someone with a direct line to President Kennedy was an advantage in your work at State?

Orrick: Yes. I think so. It definitely was an advantage, and I took full advantage of it.

Van Nest: In light of the direct line that you had established from President Kennedy, what sort of a relationship were you able to develop with Secretary of State Rusk?

Orrick: I had a very good relationship with Dean Rusk, going back to the days I was at law school. He was a professor at Mills College. He audited legal classes at Boalt Hall. We used to pitch pennies together. I was very pleased to be working for him. I told him I thought that I could do the work, if he would give me time every week to tell him what I had done and to get his suggestions. And he was good enough to do that. So, I would see him at a given time each week and tell him what I had been doing and then ask him for his counsel.

Dean Rusk is a fine man and very bright. He and I got along very well together. He had ideas on every subject that I brought up. And I found him very helpful. I felt that someone at the top knew precisely the problems that I had to deal with in my administrative job.

Van Nest: Did you sense any resentment on his part to the fact that you had

such a close relationship with President Kennedy?

Orrick: No, not in the slightest. He is not the kind of person that would harbor resentment. As far as I know, he was perfectly happy to have me in the department.

Van Nest: We hear a lot today about the crafting of foreign policy and the difficulties of making and establishing a coherent direction for foreign policy. Was there an apparatus in the State Department during the period you were there, Judge Orrick, for the establishment and the maintenance of some sort of overall coherent foreign policy?

Orrick: No, there was not. And I think for good reason.

One of the undersecretaries, George McGhee, undertook the project of establishing a looseleaf notebook into which he would have his staff place a summary of our "foreign policy" as to every country in the world. This couldn't possibly work because there are so many people involved in developing "policy." And it differed for every country.

For example, our foreign policy, insofar as our relations with Great Britain went, was made in the President's office and in Washington. There was nothing for the American ambassador to do in London concerning American foreign policy. However, when it came to making our foreign policy as to the Belgian Congo, our man on the job, Ambassador Ed Gullion, was making the foreign policy himself. He didn't have time to get cables back to the Secretary and then have the Assistant Secretary for Africa review them and then have the country director review them and then have them come back up that ladder. He was on the firing line. He had to make these decisions, and make them he did, good or bad.

Overall foreign policy, really, was made after consultation and conferences among the top people in the State Department, the National Security Advisor, Mac Bundy, as well as the President.

Van Nest: Was there no mechanism set up at the State Department during

your tenure there to attempt to formulate foreign policy with respect to our major objectives in the world, for example, our relationship with our major adversaries in the world?

Orrick: There was a section called the Policy Planning Section, headed by an erudite, experienced foreign service officer and staffed by specialists in various countries of the world. They worked and produced papers primarily for the Secretary and for the President on various major problems facing the United States.

Van Nest: That was something outside the realm of the administrative unit of the Department of State?

Orrick: Yes. They were staff rather than line, as the distinction goes.

Van Nest: What sort of a relationship did you have with George Ball, who was Secretary Rusk's chief deputy?

Orrick: As I stated previously, George and I didn't get on particularly well personally. Although I tried to keep him advised, as I did the Secretary, he didn't like to spend that much time. And he would occasionally send an assistant of his around to see me and ask me to do something. And I would do it, if I thought it was right. I wouldn't do it if I thought it was wrong.

All this rather amusingly came to a head when I took my family for a three-day vacation over New Year's down to the Bahamas. When I got back, I found an order on my desk that I was to move my staff from the 7th floor to the 3rd floor.

Van Nest: Was the 7th floor the floor on which the Secretary and the Undersecretary were located?

Orrick: Yes. I learned very quickly in the Army, the closer you were to the flag, the better off you were. And I didn't appreciate that at all. So, I got hold of one of the best, if not the best of the civilian staff that I had, who had been in the department some time, a fellow called Herman Pollack, who was a superb bureaucrat and a superb politician.

He said, "This should be no problem at all."

He suggested that I form a committee and have someone from George Ball's staff attend the committee meetings and hold the committee meetings once a week for several hours for the purpose of planning the move. I did as he suggested, and I soon learned what a very wise suggestion it was, because not one desk or chair or body was moved from my office to the 3rd floor.

Van Nest: Thanks to Mr. Pollack and his planning?

Orrick: Yes. Thanks to Mr. Pollack and his planning. That, of course, didn't endear me to George either.

Then we had a problem in the department in the passport office of Frances Knight, who had a separate domain all of her own. She claimed never to have been subject to supervision by the Secretary or anyone else. She had started in this job during the Eisenhower Administration, and she built a strong constituency on Capitol Hill by furnishing passports overnight to any senator or any congressman and, indeed, for any one of their friends. There was no possible way that we could handle any problems with Frances. And, recognizing that I backed her and promised any assistance that I could give her, George gave me instructions to see her moved. I didn't follow those instructions.

Sometimes, George and I didn't coordinate very well. The President asked me to form a committee to study the feasibility of having a professional foreign service academy similar to that at West Point and at Annapolis for the Army and the Navy. To that end, I was on this committee -- I might have been the chairman of it. I have forgotten now. But other members of the committee were Abe Lincoln, who was an Army general on the National Security Council staff, and one or two others. The idea was to have this committee talk to the people on the Hill who were interested in this.

I remember one afternoon George and I went up to talk to a subcommittee of the Foreign Relations Committee headed by Senator Stuart Symington. George and I had different views with

respect to some of the questions the Senator asked, and the Senator was interested in it. We had gone up there with the President's blessing immediately beforehand, but we made a mess of our presentation because we hadn't spent enough time together to iron out the differences that we had.

Van Nest: Was the problem that George Ball was uncomfortable with your direct contact with the White House?

Orrick: I think that, in part, accounted for it. And when he got into something, he just moved in. He was very effective and, as I say, he was courageous and bright. I have seen him casually a couple of times since, and we always are friendly and so on. We never developed any personal animosity. Indeed, Marion, my wife, joined George's wife in visiting foreign embassies, something that was not a particularly pleasant task.

Van Nest: Whatever happened to the foreign service academy notion?

Orrick: It died aborning.

Van Nest: Was there no political interest in it?

Orrick: There was interest in it, as I said, from Senator Symington; also from [Henry] Scoop Jackson, the senator from Washington, and two members of his staff, who pushed things; Dorothy Fosdick and some man whose name I have forgotten. But the foreign service was strongly against it and pointed out, quite logically, that the top foreign service officers had come from different backgrounds, had developed different skills and had been successful and not put into particular molds.

I had an exceedingly interesting talk with the permanent Undersecretary of the foreign office of Great Britain, in which he told me that the British foreign office had an arrangement pursuant to which they carefully monitored each foreign service officer for eight or ten years, placing him or her in different posts and then finally deciding who would be capable of being ambassador and where and when. So, just to take a major example, he said he could tell me on that day who would be the British ambassador to

the USSR ten years hence.

I will say for our foreign service, we shuttled ambassadors and top officers back and forth between the Iron Curtain countries and the United States so that we always, with the possible exception of Averell Harriman -- and I call him a pro -- we always had professional people in the embassy in Moscow.

2. Selecting the Nation's Ambassadors

Van Nest: Judge Orrick, did you have any role in the selection of ambassadors during your tenure in the State Department?

Orrick: Yes, I did.

Van Nest: What was the system and how did it work in the Kennedy Administration?

Orrick: Well, generally speaking, Ralph Dungan in the White House, who supervised foreign affairs to an extent for the President, and I would meet and discuss the virtues of a political appointment whom Dungan would suggest and a foreign service officer appointment whom I would suggest. I would get my candidates after reviewing a list prepared by the director general of the foreign service, Tyler Thompson, who was on my staff, and discussing qualities and drawbacks that they had with other top officers in the department. And that included, at one time, Chester Bowles and at another time Averell Harriman.

Then Dungan and I would see if we could come to an agreement on who would be the best. And, if we couldn't, we would agree to go to the President. I think that happened only once. President Kennedy was very much sold on the professionalism of his foreign service officers. He is about the only president that I can recall who had professional foreign service officers in the main embassies in Europe, such as Madrid, Rome,

Paris, London, Stockholm. While I was in the department, they were all professionals.

Van Nest: Was there tremendous pressure within the administration, generated by people other than the President, to accept non-professional candidates, political appointees to some of the more desired spots?

Orrick: Yes, very definitely.

For example, our ambassador to Ireland has usually been an amateur. The man that I swore in was Matt McCloskey, who had assisted financially to a large degree in the campaign and who had a good many contacts with the federal government. I remember, after he had taken the oath, he was overcome. Tears came to his eyes, and he said how grateful he was for the appointment because he had long looked forward to bringing all his family back to Ireland, and they could come and stay with him at the embassy.

Van Nest: Can you recall the one occasion on which you and Dungan had to go to the President over an appointment?

Orrick: I don't. It could have been the appointment of Outerbridge Horsey to Prague.

Van Nest: What was controversial about that appointment?

Orrick: Arthur Schlesinger, who kind of made his own job around the White House, followed what I was doing. He would have me lunch with him over at the White House dining room and discuss possible ambassadors and differences in writing cables and a lot of things that were desirable.

But, usually, I am practical. He was quite concerned about the appointment of "Outer" because he felt that he was not liberal enough in his views. I pointed out to him that our ambassador to Czechoslovakia hardly ever got to see anyone in the Czechoslovakian government. He was watched day and night and, although he had a beautiful big embassy, he didn't need and, as I recall, didn't have more than fifteen people in the whole embassy. I think that was the one that we have talked about.

Horsey got the job, I should add.

Van Nest: Was Schlesinger pushing from time to time for specific candidates, or was he looking for political orientation more than anything else?

Orrick: Well, it was both.

3. The Bureaucracy Fights Back

Van Nest: Did you receive any special assignments from Secretary Rusk during the time you were in the State Department?

Orrick: Yes, I did. There are so many Americans stationed in embassies around the world that it becomes, not only very hard to keep track of them, but nobody assesses the value they are to the United States.

On one occasion, the Secretary asked me to accompany him abroad and talk to the European ambassadors about what use they made out of these numerous people that are not State Department connected people. The first place I went was to London. Our ambassador then was one of the great ambassadors we have had, David Bruce.

I asked him "David, do you know how many people you have in your embassy?"

And he said "No, I really don't."

I said, "Would it surprise you to know that you have" -- and, I think, the number was in the neighborhood of a thousand -- "American military people stationed here, Army, Navy, Marines, Air Force?

Van Nest: Just affiliated with the embassy?

Orrick: Yes, all affiliated with the embassy. He said, "That is perfectly absurd. If I want information about Great Britain's defenses, or if I have a question, I just call up Peter Thorneycroft," who was then the Minister of Defense. "He will tell me what they are doing in such-and-such a place. Or I see him at the club. I don't need all of those military to be finding out what they do here."

So, I then determined from an administrative officer that there were persons attached to the embassy from every single one of the cabinet departments and from every single agency in the United States Government. And this just doesn't mean the CIA [Central Intelligence Agency] and the FBI, but the Securities and Exchange Commission, Social Security, from each of the myriad agencies which are so difficult to support these days.

When I went to Rome, our ambassador there, also a first-class ambassador, was Freddy Reinhart. I asked Freddy if I could meet with the people who were annexed to his embassy, and he said that was no problem. We would meet the next morning at 9:00. When we went into the room where the people were, it was another huge room, crowded with people, Fred said, "Do you want me to ask each one of them to stand and give you the name of their agency?

And I said, "Yes."

We were there for about three hours. The same thing was true in Bonn and, to a lesser extent, in Madrid.

Van Nest: Whatever became of the project? Were you able the do anything about the number of American public servants abroad?

Orrick: Only complain to their particular agencies. But nobody had time to work on that.

Van Nest: I take it the real concentration was in the popular capitals of Europe?

Orrick: That was true. And there were lots of, for example, veterans, living over there. So, if they didn't get their check from the Veteran's Administration, they wouldn't have to come back to the United

States. They had some place to go. Social Security and that sort of thing. But really a huge complex.

Van Nest: Later on, in a book he wrote about the State Department, John Leacacos states, "Poor Orrick aged six years in six months in the State Department." Is that an accurate statement of your experience?

Orrick: That is not the way I would have written it.

Van Nest: He was implying you had a tough time. Did you?

Orrick: No, I don't think that I did. I had a tough time only in the sense that I was changing a number of procedures. I did my level best to get them well done and done up properly.

I had, working with me, my law clerk from the Department of Justice, Murray Bring, who clerked for Chief Justice Warren for two years, and then with me for two years. He is a very close friend of mine now. I was also fortunate to have top-flight Junior Foreign Service Officer, later an ambassador to Tanzania, Brandon Grove, who was marked as a Kennedy man, and who was also my special assistant. He, too, became a close friend of mine. And then we surrounded ourselves with people who were like them.

So, to me, it was exciting and interesting for the most part. But, when I would get to one of these new ideas, and it was properly prepared, I had to get Dean Rusk to sign off on it. So, he would sign off, and, at first, I was very pleased. Now we were getting some place. But nothing, but nothing, ever happened. I could tell you dozens of things.

Van Nest: Give us one or two.

Orrick: Well, I said that in order to properly prepare for what was the most important domestic act we had, namely, getting money for what we wanted to do abroad, that we should make the assistant secretaries justify their budgets. This wasn't something for some lower civil-service type to put in.

Dean Rusk said, "Let's see how it works."

I said, "Just like the old community chest days, United Way, you and George are the top of the ladder and -- well, the three of us will listen to the pitches. I will pitch the questions, and then we can confer on these things."

So, on one matter, -- and Leacacos wrote this in his book -- I had told the Assistant Secretary for Europe that he had to get rid of his train that ran from Bonn to Berlin. This is a good example, although, it's a little bit of another story.

I had been visiting in Bonn with the Ambassador. I always took one of my assistants with me. I would talk to the Ambassador and the CIA agency chief, and my assistant would talk to younger officers. I would talk to the political officer, so we would get an idea of what was going on.

After the War and Yalta, when the United States, Great Britain and France ceded to the Russians all the land between Bonn and Berlin and kept Berlin under the control of the four powers, it was thought to be necessary to show that we could travel any time we wanted across Russian property to get into Berlin. The Americans had liberated the famous Blue Train, which was the Train of the Future in the 1939 World's Fair at New York. The Ambassador would go up once a month, or twice a month, and he would send other people up in it.

Van Nest: Riding into Berlin?

Orrick: Riding into Berlin. It had a sleeping car. The Ambassador took me up with him. It was a pretty lousy train compared to modern standards. It rocked all over. I had a chance to observe the Russians stop us and ask to get on board, and our personnel told them to stuff it. It was sort of a ritual that went on.

Well, I asked the Ambassador, "Is it absolutely necessary to keep that train?"

And he said, "Yes. Yes, it is."

Then, I asked him, "You were talking about John Rooney. Did he come over here this summer?"

And he said, "Yes. I forgot to tell you that. Yes, he was here."

I said, "Did you entertain him?"

"No, no I didn't this time. Of course, he doesn't like to stay in the embassies. He and his wife, Kate, get a suite in a big hotel, and scream and yell at each other and break whiskey bottles. The further they get away from here, the better."

I said, "Why did he come here?"

"I don't know. Maybe he just wanted the trip."

"No, no. Rooney doesn't travel just for that."

So, I got the administrative officer and said, "Did Rooney talk to you?"

And he said, "Yes."

I said, "What did he talk about?"

"Oh, he talked about some expenses and one thing or another. And he asked for the log book of the Blue Train."

I said, "Where is the log book of the Blue Train?"

He said, "Well, do you want to see it? Nobody really wants to see it."

I said, "Rooney saw it, didn't he?"

"Yes."

"Get me the log book and give me your private office."

I went through the log book, and, yes, the train did go to Berlin once or twice a month. But guess where it went the rest of the time? It went for rest and recreation for the officers. They would take the train down to Munich and go skiing and go to the Octoberfest and other spas.

I said, "We won't be needing the train next year."

"Oh yes. We need it to go to Berlin."

"Oh, no, you don't."

Van Nest: Did you then appear before Rooney?

Orrick: Well, Bill Tyler was the Assistant Secretary for European affairs. When he appeared before the Budget Committee, I asked him to justify the train. He did, to the satisfaction of Rusk and Ball.

I said, "Well, I want to tell you" -- I already told them previously what the Administrative Officer told me and what I told him.

And Tyler said, "I just have to have it. That is all there is." So, we passed that. I didn't have to present that part of the budget to Rooney. The assistant secretaries did.

Bill Tyler was a very bright, small fellow -- knew [Chancellor Conrad] Adenauer. He was a perfect diplomat. He no sooner got into that room than Rooney just tore his skin off, piece by piece. And that ended the Blue Train.

So, that is the kind of thing. But Rusk signed off on that budget process. They never held another meeting.

He asked me to get a set of procedural rules governing a "trial" of one of the victims of the [Senator Joseph] McCarthy days, who was a very good friend of Rusk's. His name was John S. Service. Murray got up a good set of rules, so he could regain his good name. Dulles had fired anybody that McCarthy poked his finger at. [Secretary of State John Foster] Dulles threw them out

just like that, without a hearing or without anything. So, we did that. And, again, Rusk signed off on it. I asked him if I could proceed with the matter. He was defended by Roger Robb, now a D.C. Court of Appeals Judge.

Van Nest: Whatever became of the rules that you drafted?

Orrick: They are someplace in the State Department, as far as I know.

Van Nest: Not implemented?

Orrick: Not implemented. This was true of many, many things. So, to that extent, it was, indeed, frustrating.

4. The Cuban Missile Crisis

Orrick: But then, in about the middle of all of this, came the second Cuba.

Van Nest: The incident you are talking about is the missile crisis.

Orrick: Yes.

Van Nest: What do you remember about that?

Orrick: That occurred in October.

Van Nest: Of which year?

Orrick: Of 1962 or '63.

Van Nest: Were you in the State Department at that time?

Orrick: I was in the State Department at that time. On that occasion, the Agency, the Chiefs of Staff, the Joint Chiefs of Staff, Winston Churchill, everybody, were very much disturbed by the fact that the

United States had determined that Soviet freighters, which were covered by destroyers and followed by American planes, were coming to Cuba. Photographs had been taken of the cargo on deck, and experts had determined that they were missiles.

At this time, the government was in the biggest trouble ever, I guess. The safe places where the leaders were supposed to go, the big cave that is in the Blue Ridge Mountains and out at the Western Defense Command post in Colorado -- Everybody was getting up to Condition Two, Condition One being the real red alert.

So, on this morning, we were meeting with the assistant secretaries. We had that small meeting I mentioned earlier on every morning with the Secretary of State and the Undersecretary. Then, we would meet with the other secretaries twice a week.

Van Nest: "We" being whom? You and Rusk and Ball?

Orrick: Yes. And the AID guy, Fowler Hamilton or Dave Bell. And my seat was next to Averell Harriman. Harriman was so great.

Van Nest: What position did Harriman hold at that time?

Orrick: Undersecretary for Political Affairs. Harriman went up and down in the government. We used to say of him his only problem was at the age of 77, he was still very ambitious. He was very serious, and a good friend.

So, he looked at his watch and said, "Mr. Secretary, it's four minutes to 10:00."

And the Secretary said, "The meeting will be adjourned for five minutes, or longer." So, they went back to their offices.

We were blockading Cuba, and the meeting of our blockading ships with the Russians ships was scheduled at one minute past 10:00. About two minutes of 10:00, the word came over -- we had a direct line, of course -- that the Russian freighter was turning and going back.

We went back into the room and were very pleased. That is where Rusk made his famous remark, "They blinked." But what the event did show was that we were not properly prepared.

Van Nest: What was it about the state of preparation that troubled you?

Orrick: Not only was it troubling to me; more importantly, it was troubling to the President. That was our communications. We just didn't have the up-to-date communications that we should have had. So, Mac Bundy called me and said, "The President wants you to head up a special committee on communications. You are to make reports to the National Security Council on the present state and what should be done to bring it up to current levels and what should be done to keep abreast of it in the future."

Van Nest: What was it that had happened during the Missile Crisis that had called this problem to the President's attention?

Orrick: The President couldn't communicate with anybody. He couldn't communicate with the Russians. We finally had to send his communications in the clear.

Van Nest: By "in the clear," you mean outside diplomatic channels?

Orrick: No. Just the way we are talking, uncoded. We couldn't use this magnificent code, which I have mentioned previously.

So, I went into the departments as soon as Mac told me that. I figured I better know what our own was like. At this point, the President was trying to communicate with the heads of state all over the world and tell them that the crisis isn't over, but this is why we were doing this and that. The United Nations Security Council was being called into session.

I went into our department and almost cried. You could not have believed it. I can't believe it today. There were little old ladies and little old men looking like pictures in a telegrapher's office out of Lathrop, California, in the old days -- green visors down to here, black shirt sleeves -- punching codes in, and yards and yards of tape out here, which nobody was translating. It was

just a mess.

Van Nest: And this was the central communications network for the State Department?

Orrick: For the State Department. However, the other services -- everybody needs his special communications, and every agency had their own communications and their so-called back channels.

So, the next day, I was ordered to have lunch with [Secretary of Defense] McNamara and Bundy. We discussed what we should do. There wasn't too much to discuss, except we had to look at it. They then assigned a rear admiral as my deputy. I was getting a little shaky then, because I was in another field.

Van Nest: I take it the idea was to improve communications throughout the departments of the government?

Orrick: Throughout the departments of the government and with other countries and, as far as that goes, with our own armed forces all over the world. So, I got my top staff together and, as I mentioned before, the best bureaucrat I ever met, Herman Pollack.

He said, "You don't know what you are in for. I know one thing. Don't move until you get a certificate or an order signed by the President of the United States."

I said, "They have told me that the verbal command is enough."

He said, "No. It is not enough."

So, I called up Bundy and said "Mac, I need a NASAM -- I have forgotten what the acronym was -- It was an order from the National Security Council -- rather like one of those findings they are talking about in the mess today -- signed by the President and marked "approved."

Van Nest: By "mess today," you are referring to the Iran-Contra affairs?

Orrick: Yes. So, I got the NASAM, and Pollack said, "The next thing to do is to seize the whole bottom floor of the State Department, except near the elevators, and order the Marines in."

The State Department had, then, a company of Marines who were Fox Company. They were stationed at different posts around the world and quite a few of them in Washington. He said, "You get double their number and close off these entrances." So, I did that.

Van Nest: What was the idea of closing off the entrances on the bottom level?

Orrick: So people couldn't come in and see what we were doing at all. There were several big offices back there. There was a big conference room, which was used for international conferences, and a nice big table. And then there were assigned to my committee -- I was chairman, the Rear Admiral was Vice Chairman. We got a top person from Western Electric, Bill Baker. We got Jerry Weisner, who was President of MIT at the time, and knew what he was talking about. We got a fellow from the Agency who knew about their communications.

Van Nest: By the "agency," you mean whom?

Orrick: The CIA.

Van Nest: All right.

Orrick: And that was the group. Then I said, "Now, I don't know anything about the communications. We want to have experts right there." So, we set up chairs around the table of where our experts could sit, and then we started in first with big maps, showing where the current communications went, and then how could we seize one communications system, for example, from Paris to Brussels, which wasn't needed by the military at that time, and put that over here in another place. There was a complicated system of channels, and the Pentagon rose up as one man in arms against this, taking any of their systems, even though they were not used or were obsolete.

Van Nest: Why was the Pentagon completely opposed to it?

Orrick: Because, as they pointed out to me over and over again, "If I can't get into immediate telephonic communications with my colonel on the line, I only have command of this desk, and I want communications with all of them." And that began with [General Henry H.] Hap Arnold and the lot. They figured out how to play me. I was in a tough bureaucratic game that I had no experience with.

Van Nest: With lots of resistance all around?

Orrick: Lots of resistance all around.

Van Nest: Were you able the solve the problem eventually, or did the bureaucracy win again?

Orrick: No, I couldn't solve it.

I will tell you one amusing incident to show what the problem was. With the aid of our experts, we had rerouted quite a number of these channels, put in new channels in different parts of the world all over. We were really getting going. So, I said, "We have no recess during our conference. We go from 9:00 to 12:00, except maybe five minutes for everybody to go to the bathroom, and that is all. Nobody comes in. In the afternoon, we will deal with any problems we hear about during the noon hour, which will be many."

So, we were into this, and all of a sudden, a Marine comes in and says, "I'm sorry sir. There is an urgent call for Admiral So-and-So." I turned to the Admiral and said, "I thought we had an agreement that we weren't going to leave."

He says, "I have to. I have to."

"Well," I said, "I am going to keep going. If you have to -- "

He said, "If you don't mind. Just give me ten minutes, because I don't want to miss any of this." He came back, and he was white as a sheet.

I said, "What happened?"

He said, "That was General [Curtis] Lemay on the phone." And his ear was red. "He said that I was going to be removed immediately, and I was not to do another thing on this thing."

It was near the noon hour, and we broke up.

Van Nest: The idea was that General Lemay was not at all interested in participating in the program?

Orrick: Precisely. He was the Chief of Staff of the Air Force at that time, or right next to Hap Arnold.

Van Nest: Did these problems eventually overwhelm the efforts to improve the system?

Orrick: Not completely. The Pentagon and Bob McNamara -- smart as a steel trap -- knew how to run things. He ordered General Starbird, who was young general and who had graduated with honors at West Point and then obtained a Ph.D. from MIT, to replace the admiral as my deputy. General Starbird at the time was commanding the nuclear test operation at the Bikini Atoll in the Pacific. They flew him home, gave him a third star, making him a lieutenant general and of equal rank with me. General Starbird was smart, friendly, and a superb diplomat and advocate. With his efforts we finally finished what was known as the "Orrick Report on Communications."

As a result, the State Department communications equipment was greatly improved. We got important new channels and the Committee was responsible for the launching of three or four communications satellites. We also recommended the President of the United States be given the power to talk on a direct line on the telephone with the head of each country of the world such as the Prime Minister of Great Britain or the President of Ecuador. He did have a direct line scrambler phone to No. 10 Downing Street in London and was able at all times to talk to the Prime Minister. The Committee also recommended a direct line to the Kremlin.

Under the old system we would send our encoded messages to their PT&T. It would stay there about three or four days, and then they would send that down to the KGB. The KGB would try and break our code and see what it was and then send it back to the PT&T, and a messenger from the embassy would come down and pick it up.

Van Nest: Three or four days later?

Orrick: Yes. Our embassy also received daily diplomatic pouches. The direct line to the Kremlin was installed shortly after our Committee report was completed.

Van Nest: That is the Dr. Strangelove line between the President and Soviets?

Orrick: Yes. The General Secretary of the party could talk directly to the President. The idea of having the telephones in so that the President could talk to each head of state also worked in reverse.

The President of Ecuador, down in Quito -- who turned out to be a drunk -- used to call up President Kennedy on this direct line, at any time, day or night. And so we had to make an Ecuador cutoff in the system.

5. Selling Weapons Abroad

Van Nest: Judge Orrick, after you moved over to State, did you discover some rather surprising practices there with respect to the management of atomic weapons and their sale to third countries?

Orrick: Yes, I did. When I first came over there and looked at my position on the chart showing the chain of command and the bureaus that reported to me, I had the top person in each come in and talk to me and tell me what they were doing. Finally, I got down to one little box that said something like defense liaison-weapons. I

thought, "Well, that is something I never heard of." So, I called the number given on the chart. The man who did the work there answered, and I told him I would like to see him.

He said, "Well, nobody sees me."

I said, "I am new in this job, and I want to see you in my office this afternoon at 2:00."

So, when the time arrived, this person came in furious.

I said, "What are you so mad about?"

He said, "Well, nobody has ever asked me to come from my office over here."

I said, "Where is your office?"

"It's over on Ninth street."

"Tell me about it. How many people are over there?"

"About six or eight. That is all."

"How many rooms do you have?"

"I have got three or four or five rooms. You could probably find that out, if you looked on your own chart."

I said, "Doubtless, I could. Tell me what those people do. First, you tell me by whom are you supervised on this chart?"

And he drew himself up and said, "By the Secretary of State."

Well, I am enough of a bureaucrat to know that anybody who says he is supervised by the Secretary of State is lying to you, because the Secretary of State just does not have time to supervise anyone.

I said, "Well, tell me exactly what you do from 9:00 to 5:00."

"Well, those are my hours," he says. "And I read all I can about nuclear weapons and other weapons. Then, I sit on our weekly meetings of our committee."

"Who sits on the committee?"

"General So-and-So from the Army, General So-and-So from the Air Force and Admiral So-and-So from the Navy, as well as a high official the CIA. I represent the State Department."

I said, "Why do you have these meetings?"

He says, "Well, whenever we are selling arms or loaning arms to other countries, we meet to see what effect it's going to have and decide whether we are going to approve it."

I said, "You are going to be approving this?"

Van Nest: What kind of arms was he talking about?

Orrick: He was talking about not only regular rifles, machine guns and so on, but he was also talking about nuclear weapons. The minute he left, I went down the hall to see Alex Johnson, who was the Undersecretary for Political and Military Affairs, and was a long-time State Department Foreign Officer. He had been Ambassador in a number of places. He was a superb top officer.

I said, "Alex, I don't know anything about this person. Do you know anything about him? Well, you don't have to answer that, because he is not going to be under me any more. I am moving him, right now, under you. You supervise him."

Just the other day there was a story in the newspaper which criticized a decision to sell nuclear arms to a small country made by State Department personnel in a particular small office in the State Department, and I would bet my meager salary that that was the same type of operation, and it never changed.

6. Learning Politics in the Department

Van Nest: Did you run into some ticklish political problems during your tenure at the State Department?

Orrick: Yes, two in particular that I remember very, very well. The first had to do with a request from Senator [Mike] Mansfield -- who, at that time, was majority leader of the United States Senate -- to send him an employee of the State Department called Henry Ford, who happened to be the communications expert in the State Department, to act as Mansfield's guide on his upcoming trip to Saigon.

Van Nest: How did you hear about this request?

Orrick: Mansfield's administrative assistant called me and said that he assumed there would be no problem with it. I said, "You are asking for about the most important person in the Department now, because of our communications setup. I can send a former ambassador with him who would know a lot more about the background."

He said, "The Senator wants Ford."

Van Nest: Had Ford traveled with Senator Mansfield before?

Orrick: Yes, and it was for that reason that he wanted him. I wanted the approval of Secretary Rusk before I turned down Senator Mansfield's request and sent with him instead a former ambassador who knew a good deal about the problem. The Secretary said: "I agree with you." I then went back to my office and called Senator Mansfield and told him that we needed to keep Ford here on account of his communications specialty. The Senator uncharacteristically was mad and hung up.

I immediately went down to see Secretary Rusk to tell him about this. As I walked into his office I heard, "Yes, Mike. Why, of course. Why, certainly. Of course you can have him. Sorry you

were inconvenienced." The Secretary was sitting there with his shoes off, with a little glass of whiskey by his side. He liked to be called Mr. Secretary.

I said, "Mr. Secretary, I think that is most unfair. I could have made my number with Senator Mansfield, if I had known you weren't going to back me. But you told me when I came in here you would back me.

He said, "Don't get so mad, Bill."

I said, "I have a right to be mad."

He said, "Come and sit down over here. We went and sat down. I sat on the couch, and he sat on the protocol side.

He said, "I will tell you what it reminds me of. When I was in the Army -- " he loved his Army experience -- "we were down at Fort Benning. It was a hot day, and we were out on the rifle range. We had had a short break, so we all went onto the bleachers that were there. I was sitting up at the top, next to a second lieutenant, and the general was sitting down on the first row. It was a National Guard outfit, so nobody was in very good shape, least of all the general. The general was fat.

"The lieutenant leaned over and said to me in an audible voice, 'How do you suppose that miserable, fat old jerk ever became a general?' Everyone in the bleachers could have heard him. The general turned around and looked up at the lieutenant and said, 'Politics, my boy. Just politics.'"

Van Nest: You got the message?

Orrick: Yes, I got the message.

Van Nest: Did you get some political advice in the State Department from your friend, Byron White?

Orrick: Yes, some very good advice.

The assistant secretaries, when they had problems involving personnel -- housing, feeding, everything except substantive problems -- were to come to me and not directly to the Secretary. I found they were not coming through my office. And Rusk would never tell me in these weekly meetings that I had. Maybe he didn't remember it. But these characters were just running my end. I found things happening that I thought were inappropriate, and I didn't know what to do.

Van Nest: End running you to Ball or directly to Rusk?

Orrick: No, directly to Rusk. So, I asked Byron White for advice. We had lunch together, and he said, "Does that really bother you?"

And I said, "Yes, it does. Wouldn't it bother you?"

And he said, "Yes. I will tell you how to handle that. I had a similar problem. When I first started playing for the Pittsburgh Steelers in about the first game of the season, I was just getting beat up. By the second game of the season, it was mayhem, and I spoke to the coach about it. In those days, we didn't have any good trainers. If you were laid out, they would put you on a stretcher and throw you under the bench and look down every once in a while and say, 'How do you feel?' I was very tired of that.

"So, the coach said, 'I know what you mean. Now, when we come back in the second half' -- and he told the quarterback -- 'You call Byron's number, and I don't care where you are on the field. You call his number.'"

Whizzer I guess he called him --

"And he said, 'White, you carry that ball out of bounds. You are going to get tackled. You get up just as fast as you can, and you kick that fellow -- in front of the crowd -- in his vital parts, and then bend your foot back and put your heel right down on his Adam's apple, or as near to there as you can get it.'"

So, I said, "Then what happened?"

He says, "I did exactly as I was told, in full sight of the

crowd. The whole stadium rose and booed. The Pittsburgh Steeler fans were booing. And they took this fellow off the field on a stretcher. The penalty then for unnecessary roughness was half the distance to the goal line. It put the Steelers way back on the five-yard line. I was taken out of the game. But not once in the rest of that season, or in the season that I played with the Detroit Lions -- I never had any more trouble like that. We had a fair, clean game."

Byron was the leading ground gainer in the National Football League each one of these years, making money to go to law school. They paid him $15,000, if you can believe it. He is now in the football Hall of Fame.

Van Nest: One of the problems that you told us President Kennedy was concerned about at State was low morale, and the problem of foreign service officers not feeling a part of the government, not feeling called upon and consulted. Did you figure out a way to improve that problem?

Orrick: Yes. I did. That was something the State Department was always complaining about, low morale. I would say to my staff, "How do you know what the morale is in Ouagadougou, where we have an embassy?" I never got a satisfactory answer.

Every year a group of prominent public persons come in to review the files of each foreign service officer. They are people from private life who are willing to give up two or three or four weeks of their time to serve on this board, reviewing those eligible for promotion. An older foreign service officer and one or two civilians make up each panel. They would recommend to me who should be promoted.

I suggested to the President that we bring the personnel who had been promoted to the White House. After everyone was assembled in the Rose Garden, all he would have to do was congratulate them and shake hands. I thought this would be a great morale boost. Kenny O'Donnell, who was in charge of the President's appointment list, said, "No, the President is too busy."

I had done the appropriate bureaucratic thing. I had talked first to the President. So, I said, "Kenny, if you talk to the President, I think you will find he changed his mind. If he has, please let me know and tell me what time will be convenient to have these fellows in the Rose Garden, and we will be on time. If he hasn't changed his mind, I hope you will call me anyway."

So, he called back in about fifteen minutes and growled into the phone, "Wednesday at 11:00." We assembled in the Rose Garden at the proper day and time.

The President came out, his smiling self, and congratulated everybody. He said how much he appreciated the support that he got from the State Department on different foreign policy matters. Then he walked around and worked the crowd, as the pol says. He shook hands with everybody there and thanked me effusively for bringing them in. Kenny was still scowling.

Well, I will tell you, the morale in the State Department lifted the building about six feet high. It was incredible. The word of the Rose Garden meeting went out to foreign service officers serving all over the world. The morale throughout the service was very high. This was a worthwhile thing to do, and I certainly would have made that an annual event had I stayed there any longer. It was incredible.

Van Nest: Can you tell us what the circumstances were under which you left your job there?

Orrick: The attorney general was very disappointed and, in the vernacular, fed up with [Lee] Loevinger, who was the assistant attorney general in charge of antitrust.

Loevinger was an antitrust scholar. He had written widely on it. He had been appointed to the Supreme Court of Minnesota from whence he came to his present job. He knew, intimately, the leaders in the field, and he seemed to be a good choice on his record.

His problem was that he could not get along with Bob, and

he would change his recommendations at the slightest sign of irritation from Bob. The result was that Bob had no confidence in him. He resorted to putting Burke Marshall, who had been an antitrust expert in the prestigious Washington firm of Covington & Burling, but who then was assistant attorney general in charge of the civil rights division, to supervise Loevinger.

This didn't appeal either to Loevinger or to Marshall, and so it was suggested that I return to the Department of Justice and take over the antitrust division. Loevinger received notice of this when he had his radio on one day at noon on the newscast. It was announced then that he had been nominated for the position of Commissioner on the Federal Communications Commission.

Van Nest: This was not viewed by Loevinger as a promotion, I take it?

Orrick: No. Nor by anybody else. It wasn't the best way to ask a fellow to leave.

Van Nest: Were you anxious to leave the State Department?

Orrick: No, I was definitely not anxious to leave it. I was enjoying the work. I thought I had made a number of worthwhile changes in the areas of my operations. I had put in a budget system, developed the way to appoint ambassadors, had worked out a system of getting my own views on how the various embassies were doing by periodically visiting them with one of my younger assistants. I had revamped the communications system for the whole government and done it through the State Department.

So, I was perfectly satisfied and was looking forward to doing other things; however, I took the job to help. And when Bob asked me to come back, I acquiesced.

E. Chief of the Antitrust Division

Van Nest: Did Bob Kennedy give you any specific marching orders in terms of what he wanted to see done in the Antitrust Division?

Orrick: No. As usual with him: "Run it."

Van Nest: Had the Kennedy Administration taken an aggressive view of antitrust enforcement up to that point in time?

Orrick: Yes. The President was very much upset in 1962 by the rise in steel prices. He was upset because the President of U.S. Steel, Roger Blough, had, in a personal interview with him at the White House, stated that the industry would not raise prices.

You may recall that inflation was starting to come down. And President Kennedy, like every other president, didn't want to be saddled with the heavy weight of inflation. His economic advisors told him that, as soon as they increased the price in steel, there would be strikes and general inflation.

He was quite concerned and ordered the Antitrust Division to investigate evidence of price-fixing in the steel industry. So, a grand jury was convened very promptly, and the leaders in the steel industry ordered to testify to it very promptly.

Van Nest: Was it then the perception, prior to the time you joined the division, that Kennedy and the Kennedy Administration had been vigorous antitrust enforcers?

Orrick: No, definitely not. To the contrary. On this occasion, you might recall that a big fuss was stirred up by the FBI calling on these officials late at night and early in the morning. Some said this was done at the specific direction of Nick Katzenbach, who was then the deputy attorney general, although Katzenbach later denied it.

Van Nest: What experience had you had up to that point in antitrust and antitrust law?

Orrick: None, other than a minor amount of work in my law firm. At law school, I wrote an article on price leadership, which is still doctrine. That is about the extent of it.

1. Preparing for the Job

Van Nest: Did you take some special steps, Judge Orrick, to prepare yourself to perform the job?

Orrick: Yes. I realized that I would have to work hard to get up to speed. I left my post in the State Department and then tried to get some space down at the United States Courthouse. To that end, I went to see my predecessor in the civil division, who was then on the Court of Appeals, Warren Burger, and asked him if there wasn't some room up in the attic of the courthouse where I could set up a small office and start pulling down the law books and getting up to speed in antitrust. He was very helpful and very kind in making a room available to me.

So, I spent day and night for three weeks in there going through the big cases. I was fortunate enough to get my good friend and special assistant, Murray Bring, home to help me. He was on his way to California when I got the Highway Patrol to stop him in the State of Ohio and telephone me. I encouraged him to come back, which he did. So, he and I prepared together to go over and take over the Antitrust Division.

Van Nest: Did you make some effort to consult the leading antitrust experts of the day as part of your preparation for the job?

Orrick: Yes. After I was sworn in, I thought that it would be very worthwhile to get the current views of the academic community on the various theories of antitrust. So, I went up to Yale and I had an interesting meeting with King Brewster, who was provost then, I believe -- He was teaching an antitrust course, foreign antitrust -- and also to Bob Bork, who is now making such headlines in connection with his pending hearings to be Justice of the United States Supreme Court.

Bork was an exponent of the so-called Chicago school, which decried any antitrust enforcement with respect to mergers, vertical or horizontal, and who thought that the Antitrust Division's efforts should be limited to price fixing.

Van Nest: How much time did you spend with Mr. Bork?

Orrick: I would guess an hour and a half, or two hours.

Van Nest: Was he a very committed proponent of the Chicago school of thought?

Orrick: Oh, yes. He had written on it, and there was no question about his views.

Van Nest: What were the reasons why, in his view, antitrust enforcement should be so limited?

Orrick: The main reason was that he thought that, if it were a truly capitalistic economy, it would run itself. And the state, in particular, coming forward and saying that Company A should not merge with Company B, puts itself in the position of not knowing what savings, if any, could be made by mergers or how it would benefit a particular industry or a particular part of the country. To a certain extent, I think that is entirely logical.

I remember I always quoted Mr. Herbert Hoover, who said that the reason the American economy prospered so much more than the European economy was because it did not permit cartels to operate the economy. But Bork was very clear on it. I had no doubt about the thought of the Chicago school when I went out to Chicago on that trip and talked with Phil Neal, who was dean of the law school at that time, and Ed Levy, who, I think, was president of the university -- I am not sure -- but he had a top position in the university. I also went up to Harvard and talked to Donald Turner.

And then I invited each of them to come to Washington and discuss antitrust with my section chiefs on one Saturday. This, they were kind enough to do, and the discussion was quite helpful. My first assistant, Bob Wright, whose father, incidentally, was Frank Lloyd Wright, and who brought the famous Paramount Pictures case and was a real scholar and good friend, kept the discussion on the track. So, we really got a good deal out of it.

Van Nest: Was it primarily Chicago school thinkers who were invited to this informal conference?

Orrick: No. All the ones that I mentioned. Don Turner, for example, is a great exponent of all antitrust theories, and still is.

Van Nest: Did you develop some personal views from all this discussion, Judge Orrick, that established the objectives you wanted to accomplish in the division?

Orrick: Only to this extent: The Division -- and I say this is true up to the beginning of the Reagan years where President Reagan and the Attorney Generals [William French] Smith and [Edwin] Meese have practically put the Antitrust Division out of commission -- the Division was always criticized for reacting to situations, rather than studying the economy and then trying to make changes which would improve it. We had an economic section which was active, but we had no real stars there. They would simply add their thought to cases that looked like they should be brought, cases that were discussed and the situations discussed in the newspapers and the Wall Street Journal and so on.

And so, I undertook to combat this criticism by forming an evaluation section under the leadership of my colleague, Murray Bring, to delve into the various sectors of the economy and see what we could do along those lines.

Van Nest: How did you go about setting up this evaluation unit, and how did you define the goals?

Orrick: I just ordered the unit set up and selected the personnel to work there, rather than in the places that they were working. I told them that I wanted their recommendations with respect to any sectors of the economy that should be blessed with our ministrations. The evaluation unit was more useful in evaluating proposed complaints and proposed settlements than they were in identifying different parts of the economy which we should attack.

2. Getting the Word Out

Van Nest: Let me show you some headlines that appeared at the time that you took over the Antitrust Division.

Here is one, April 5, 1964, from The Herald Examiner: "Trust Buster Out to Hunt Wolves" and a picture of Assistant Attorney General Orrick.

Here is one from The Miami Herald, April 12, 1964: "Don't Wait, Find Cases, Trust Buster Demands" and a picture of you sitting before a map of the United States.

And a third which apparently was in The London Financial Times sometime later in April: "Sharper Teeth for U.S. Trust Busters" and a picture of you on the cover.

And let me read one more. U.S. News and World Report, May 1964: "New Crackdown on Business" with a picture of you standing before the mast of the antitrust division.

Was there some concerted effort to get the word out to American business that the Antitrust Division was going to get down to business?

Orrick: Well, I thought it was part of my job in law enforcement and in running the Antitrust Division to let the interested people know what we were thinking about. And, indeed, the talks which I gave periodically at section meetings of the antitrust section of the American Bar Association and industry groups throughout the country, served, I was told, in many instances, to not only prevent practices that might violate the law, but also stopped such practices as having cocktails every Friday in a private room in the Hilton Hotel and fixing interest rates, things of that kind.

Believing that, as I did, I made myself available to any reporter who wanted to come in and talk to me about the public's business, and to any lawyer. I sent invitation after invitation to the Bar to come and present any problems they had questions about in

the antitrust field and that we would answer the questions. More than that, we would give them a "no-action letter", which simply said the "The Antitrust Division has no intention at this time of filing a criminal lawsuit against you." And the fact of the matter is that the Antitrust Division had never gone back on one of those no-action letters from the time they were started, which was maybe in the Truman Administration.

Van Nest: Did you discuss with Bob Kennedy the fact that you intended to take this aggressive posture and to get the word out, as it appeared through these articles that you did, that the Antitrust Division was going to be looking very aggressively at American business and American mergers?

Orrick: I don't remember discussing it with him. I continued that system that I mentioned earlier, of making daily reports to him of what I was doing. And, if he was interested, he would make notes on the side and return it to me and expect that I would know whether he was interested in it or liked it, or didn't like it, or whatever. He was a close student of the newspaper. His public relations officer a great human being called Ed Guthman, kept him fully advised of what was in the press on it. And I think that was the way he liked it.

Van Nest: Did Bob Kennedy take a very active interest in the work of the Antitrust Division?

Orrick: No, he did not. The assistant attorney general in charge of antitrust did not have the power to file a lawsuit. This power was taken away from him some years ago with the result that, although the newspaper articles always said that I filed the case, I didn't file the case. The Attorney General, in effect, commenced the case by signing the complaint. At that time, I would explain, in as much detail as he wanted, all about the case and what I thought probably would happen.

He showed confidence in me by always signing my complaints, although he asked me more than once, rather mournfully, "Must you always sue our biggest contributors?"

Van Nest: Can you think of any instances in which the Kennedy Administration, either the President or Bobby, intervened with your office with the effect to change the intended course of the Antitrust Division?

Orrick: Never. Absolutely not.

3. Dealing with Merger Activity

Van Nest: What, if any, posture did the Antitrust Division take under your tenure with respect to merger activity?

Orrick: We were engaged in a great deal of activity, both reviewing proposed mergers and attacking mergers that had taken place. At the time that I came to the Division, the Supreme Court had just handed down its decision in the Philadelphia Bank case that prohibited the merger of that bank with another bank and, in doing so, appeared to approve this interpretation of the antitrust laws. Having that in mind, we carefully watched for any proposed mergers.

Van Nest: Was there a lot of merger activity in the country at that time, in the early '60's?

Orrick: Yes, there was, but nothing like the mergers encouraged by the Reagan Administration, which has simply put the antitrust laws on hold. There was too little coordination of administrative action. It was not unusual to have the Antitrust Division disapprove a bank merger, while the Controller of the Currency approved it. This resulted in blatantly bad government. Attorney General Kennedy ordered me to work out an appropriate system with Douglas Dillon, who was then Secretary of the Treasury and superior to the Controller of the Currency, who was James Saxon.

Also, some bank mergers needed the approval of the Federal

Reserve System. So, to devise a viable plan for applying "good government" to these mergers, I met with Bill Martin, who was then chairman of the Fed, James Saxon and Doug Dillon. We agreed that, if any one of the three agencies disapproved the merger, we would meet and discuss it and see if we couldn't resolve our differences.

I was astonished when Saxon took the position that he was not supervised by the Secretary of the Treasury, and that he would approve or disapprove mergers in his own good time. This, again, resulted in outrageously bad government, because Saxon would send a telegram approving it, and the Antitrust Division would immediately file a lawsuit in the town where the bank was and get a temporary restraining order.

Van Nest: Was Saxon refusing to meet with Dillon and with you to work these things out?

Orrick: Yes. He was full of himself. And the bankers were very fond of him because he did whatever they told him. This eventually came to Bob Kennedy's attention. He and Doug Dillon talked with Saxon, but they didn't fire him. Saxon just kept doing business in the same way. And so did I.

Van Nest: Had you made some effort to get out the word, specifically with respect to mergers, that you were going to be looking more carefully at mergers than prior administrations had?

Orrick: Yes. And, in the general articles to which you made reference earlier, I said that. In most of my remarks to industry groups, I mentioned that we were looking at mergers. And, indeed, in the twenty-five years that have transpired since then, the department is still working on what they call merger guidelines. The last so-called merger guidelines were published only two years ago.

Van Nest: I see here that Anthony Lewis wrote a special report in the New York Times sometime in late 1984 in which he talks about the so-called Orrick theory of antitrust. Let me quote to you from the article. He is attempting to paraphrase comments you made about the Humble Oil merger.

What he says is this: "In effect, the Orrick theory was that the really huge companies, the number one in each industry, seemingly cannot gobble up smaller enterprises. They can grow only by internal efforts." Was that your view and the view of the Division back in 1984?

Orrick: Yes, absolutely. After all, the antitrust laws were created to prevent monopolies and cartels and the like. And, if a company has a monopoly, it must be a "benign" monopoly, that is to say it must be one that hasn't been formed by acquisitions. And that certainly is my view today and was the department's at that time.

Van Nest: There was criticism of you in the New York Times and in Newsweek and several other magazines, to the effect that the Antitrust Division was looking at bigness itself as something that was wrong, and that, in any attempted merger which involved a big or major player in an industry, you were objecting whether or not there would follow an anticompetitive effect.

Orrick: That is not true. I always tried to make the point whenever I gave one of these talks -- and I can remember specifically doing so in a talk I gave before Town Hall in Los Angeles and also before the Commonwealth Club here -- that bigness, by itself, is not "badness." But, as I have said, the monopoly must be benign. We were not going to let big companies keep gobbling up small companies, as seems to be the situation today. Or even in some cases today, that is in the reverse. Outside of that, I didn't think then, nor do I think now, that just because the company is big, it's violating the antitrust laws.

Van Nest: There was a fair amount of controversy over the Humble Oil proposed merger with Tidewater Oil here in California. Was that something you played a role in?

Orrick: Yes, I certainly did. We had many meetings with counsel for both companies and the officers for the companies. What Humble wanted to do was, instead of coming out here and purchasing sites for the distribution of their own products, they wanted to get Tidewater's stations and other points of distribution and simply change the name to Humble.

That is the kind of thing that we were very much opposed to because it destroys competition. If Humble wanted to compete, they could come out and put a gas station on the corner across from Tidewater. Then we would have some competition. But to give them wholesale all of Tidewater's distribution system seemed to us a rank violation.

Van Nest: Weren't there other oil companies out here prominently competing in an open market at that time?

Orrick: Yes. Arco was one just coming out then.

Van Nest: Chevron?

Orrick: No. Standard Oil Company of California, which is Chevron, is a local company, or used to be.

Van Nest: Weren't there other companies here, competing in that particular market, that made it a fairly vigorous market?

Orrick: That is absolutely right.

Van Nest: Whatever became of the proposed merger?

Orrick: The merger was disapproved. I think that Tidewater was a Getty asset. It may have been merged into Getty Oil. I don't know what happened to it.

Van Nest: Can you tell us about the El Paso Natural Gas case? Was that pending when you arrived at the department?

Orrick: It was. The very week I arrived at the department was the last week in the Supreme Court term. And, on that last day, when they announced their final opinions, they announced three or four that had to do with my division. And El Paso was one of them.

Van Nest: What were the issues in El Paso?

Orrick: El Paso wished to acquire a company owning a pipeline that would take the oil from Texas to California. The Antitrust Division

opposed it. The case was filed in the District of Utah where Government's greatest enemy, Harold Ritter, was the district judge. Ritter would never let the case come to trial. It went three times to the Supreme Court, and this occasion was the second time.

So, I knew that the best thing I could do was to settle that case because we couldn't get it litigated. The Tenth Circuit, as I recall, took the case away from Ritter, and still nothing happened.

Van Nest: Was Ritter simply anti-government, generally, or was this case one he had a personal interest in?

Orrick: No. He was anti-government, generally. He had been appointed by Truman, and he ruled against the government every single case he sat on. He would tell you that, and it was true. We kept book on him.

Incidentally, when the government condemned acres of that arid land in Utah which supported only wild horses and was inhabited by a few Sioux Indians, he was the judge who said that each horse was worth $7,500 because they were the only horses in the world who could understand the Sioux dialect. That is a true story.

Van Nest: Made it expensive to buy?

Orrick: Right.

Van Nest: You set out to settle the El Paso Natural Gas case?

Orrick: I undertook to settle the case. I have done a lot of negotiating in my career, and I have never had as difficult a negotiation as this one. We met regularly -- it seemed like it was all the time -- but about twice a month with the very competent officers of El Paso and their very competent lawyers. I can remember getting the Federal Power Commission in on it and spending one whole Saturday, with the chairman of the commission, in his office on my knees, peering at a map, and trying to figure out whether we couldn't come up with some other solution.

As I say, this was the most difficult negotiations I have ever had, and the fact of the matter is that the case again went to the Supreme Court, and this time Justice Douglas, in his friendly, kind way, began his opinion with "The government knuckled under," and that made me just plain sore. When I saw Douglas again, which was at my first circuit conference after I became a judge up in Reno in 1974 -- he was then our circuit justice -- I told him that it made me sore, and I said that it was an untruth. He didn't like that very much.

Van Nest: He believed that the government had sold out the case?

Orrick: Yes. And I never, in my negotiations with anybody in the department, had less than the whole staff that had worked on it. I always had my first assistant, Bob Wright; I always had Murray Bring; I always had the head of the economic section, Lou Marcus; and the head of the particular litigating section, Gordon Spivak, who today is one of the real leaders of the nation as an antitrust lawyer. They were always there at those meetings. But that's the impression you got from Douglas' outrageous opinion.

Van Nest: What about newspapers? Were newspaper mergers the subject of concern during the Kennedy Administration?

Orrick: Yes, they were. What was happening, and has happened since, was that, where you had two newspapers in the town, they would try and set up a joint printing facility and eventually merge. The inevitable results were newspapers like the Chronicle and the Examiner, or like the Honolulu Advertiser and many others. There were a lot of them.

Van Nest: By "results," you mean not enough diversity?

Orrick: And no competition. And they just went downhill as newspapers because, if there's only one paper that the stores could advertise in, the owners, naturally, cared more for the money than for the quality of the paper.

One of these mergers occurred out in Cincinnati, the home of the Scripps Howard newspapers. They had bought the Cincinnati

Post, so, we moved in and ordered them to divest themselves of it. And the court so ordered, and we were quite successful. I remember that merger, particularly, because it's called to my attention every summer by Jack Howard, whom I see up at the Bohemian Grove. We always laugh about it. But, for the first ten summers, he always castigated me for doing such a low act and being of such disservice to the public. However, about five or ten years ago, he said that the best thing that had ever happened to him was to get rid of the Cincinnati Post because he would have lost a great deal of money had he done what he wanted with it.

Van Nest: I have a picture here of you and a railroad map. This appeared in Newsweek in October of 1963, shortly after you joined the Antitrust Division. What can you tell us about the negotiations involving railroad mergers in the East?

Orrick: The Pennsylvania Railroad, as I mentioned earlier, as well as the New York Central, as well as the New Haven, as well as the Boston and Hartford and others, were all in bad financial shape. The Interstate Commerce Commission had undertaken to see whether or not they should be restructured. But, typically, they worked very slowly. Bob Kennedy didn't want to waste all that time, so he got his good friend, Barrett Prettyman, who is an exceedingly good lawyer, to head up a task force and talk to the railroads about restructuring their routes and so on, and to do it all over the country.

I remember sitting with Barrett and my good friends, the presidents of the Southern Pacific and the Western Pacific, and feeling quite uncomfortable, as we pointed out the ways in which they were run and what we thought they ought to do.

Van Nest: Were the people running these railroads people you had known here in San Francisco?

Orrick: I knew personally Don Russell, Fred Whitman and others. I would see them at the Bohemian Club.

But what occasioned that article was the proposed restructuring that Barrett and his committee had determined upon. I had been in Europe for a week or so. I was the chairman of the United States delegation to the OECD, the Organization of European Community Development. I hadn't kept up with what the committee had been doing, but I was asked to announce the proposed changes to the railroads and to the press. There were so many people involved, we had to use a big auditorium in the Department of Commerce.

I recall that occasion very well. I had some copies of this press release, and I told my assistant to bring in the copies after I had finished reading the proposed plan. So, like anybody who has had anything to do with politics, I always enjoyed addressing a room filled with people. I was reading slowly, when all of a sudden, everybody got up in the room and turned their backs and ran from the auditorium to my assistant, who had just opened the door of the auditorium with a big pile of press releases. I was left talking to myself and two or three others who were polite enough not to leave.

Van Nest: And for whom you were very grateful?

Orrick: Very grateful, yes.

Van Nest: Some of the newspaper reports that we have looked at talk about a proposed merger between General Telephone and I.T.T. Do you recall discussions with the principals involved in that case?

Orrick: I do recall that the president of I.T.T. then was Harold Geneen. He was a very active, thoughtful, smart businessman. It didn't bother him that he had to take on the American Telephone & Telegraph Company. He saw how to do it and do it in a place that is in part of Los Angeles County, where General Telephone still is.

He wanted to get our ideas as to whether or not we would approve that merger. And I said that we would have to get the facts and, if it was all right with him, we would send in the accountants from the FBI and find out what the facts were. He said "Well, thank you very much, but no thank you."

Engaged to be married to Marian Naffziger -- 1947.

With Adlai Stevenson and Pat Brown
on the campaign trail in 1956.

At San Francisco International Airport
with Candidate Kennedy en route to Alaska -- 1960.

With Bobby Kennedy and Justice Potter Stewart
at his swearing-in as chief of the Civil Division
of the Department of Justice. 1960.

Defending Civil Rights in Montgomery, Alabama
with Byron "Whizzer" White and Jim McShane -- 1961.

As Under Secretary of State for Administration,
with Secretary Dean Rusk, in 1962

Accepting a commission as Assistant Attorney General
for Antitrust from Attorney General Robert F. Kennedy -- 1963

Commencing work as Chief of the Antitrust Division -- 1963

At a Cabinet Meeting with the President as
Under Secretary of State for Administration -- 1963

At work at his desk in the State Department
as Under Secretary of State for Administration -- 1963

With the President and others in the Oval Office -- 1963

Antitruster Orrick: no enemy of oil

New antitrust chief implies he's approaching oil-related problems with an open mind

Clyde La Matte
Washington Editor

IF THE Justice Department is planning any new, aggressive moves against the oil industry, the word apparently hasn't been passed along yet to William H. Orrick, Jr., the new antitrust boss.

Orrick moved in last month to succeed Lee Loevinger as assistant attorney general heading the antitrust division. Loevinger has become a member of the Federal Communications Commission.

Orrick evidently is still in the process of finding out what is going on in the department and hasn't yet shaped any specific plans or targets.

"The basic problem is to marshal the resources of the department and to use them where we think it will do the most good," he told the Journal in an interview.

"I don't know just what our points of emphasis will be. We have to develop a policy, and that takes some time." The implication is that he will not necessarily adopt the policies of his predecessor.

Philosophy. Basically, Orrick takes the traditional position that competition, rather than government regulation, is what makes our economy run.

The role of the Justice Department, as he sees it, is to keep competitors within legal boundaries, else competition itself suffers.

For instance, if a company or a combination of companies controls a given market, then others have difficulty in entering that market, and competition is inevitably lessened and restricted.

"We want to stimulate competition, not regulate or run an industry," Orrick says.

The way to attain that objective, he feels, is vigorous enforcement of antitrust laws applying to price fixing, monopoly, and restraints of trade.

Orrick doesn't seem to have singled out oil for any special attention, although he has already been made aware that he inherited some oil-related issues.

IOCC report. One of Orrick's first duties in office was to appear before a congressional committee considering extension of the Interstate Oil Compact Commission.

That naturally brought the attorney general's recent report on the IOCC into the picture.

Orrick had nothing to do with preparation of that report but says he has studied it carefully.

William H. Orrick, Jr.
" . . . it takes time to develop o policy."

"I see nothing sinister in it," he says. "Frankly, we were surprised by the uproar it seems to have created in the oil industry.

"We endorsed the extension of the compact, and we expressed some opinions and viewpoints on some oil problems. That doesn't mean we want to run the industry. We don't."

He declined to elaborate on or interpret some of the implications of the report, such as the statement that Justice intends to play a more active oil-policy role because of the impact of federal and state oil controls on competition.

"The report speaks for itself," he said, using a lawyer's typical defense. He did, however, comment favorably on the Journal's analysis of the report (OGJ, May 27, p. 47), saying that it coincided with his own.

He promised, with a wry grin, that henceforth Justice will make an IOCC report to Congress annually as specified in the legislation. The recent report was the first made since 1959, and the lack of reports in intervening years had been criticized in Congress.

Pipelines. Another unsettled issue Orrick found on his desk concerns pipelines.

Justice has been making noises about oil pipelines for years, but has never taken any specific action. In the recent IOCC report, the attorney general indicated that some action is likely. Orrick neither confirmed

Explaining Administration antitrust policy to the oil and gas industry -- 1963.

U.S. Reshaping Trust-Busting

Washington (AP) — The nation's chief trust-buster is drastically reshaping the Government's antitrust enforcement posture.

His strategy is based on the observation that speeders slow down when they know the traffic policeman is patrolling nearby.

Thus William Horsley Orrick, Jr., the vigorous, intense boss of the Justice Department's Antitrust Division, is steering away from any idea of enforcing antitrust laws by sitting back and waiting for complaints.

Orrick feels that approach may be all right for the local district attorney, but that it leaves large gaps in antitrust prosecution.

That's why he is redeploying his forces to make sweeping studies of entire industries when the opportunity arises—either as the result of a complaint or of investigations by his staff.

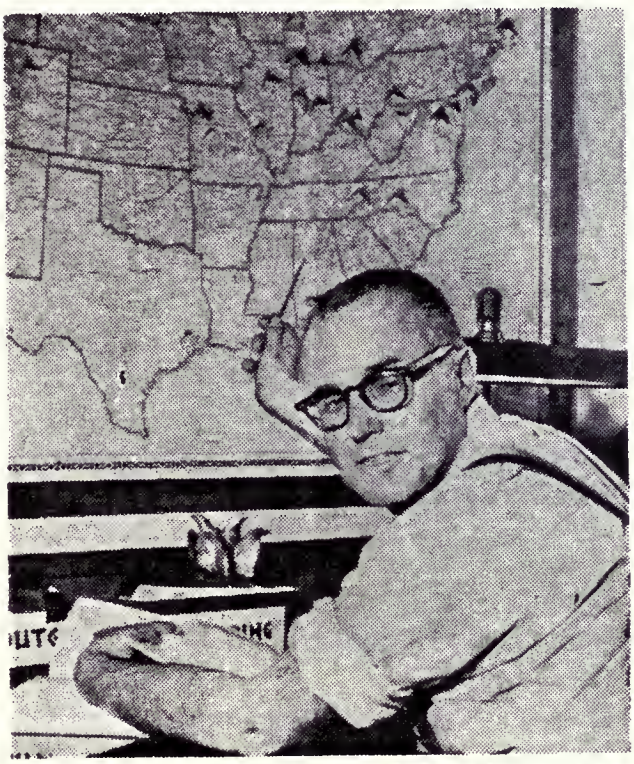
The goal is to climinate any anti-competitive practices that may have developed, unchecked, in some industries.

It was past quitting time in the late afternoon, but the 41-year-old Californian still was waist-deep in work in his Justice Department office.

Offers Illustration

In an adjacent conference room, his lawyers argued vociferously, hammering out a pending case that will be as airtight as possible when it reaches court.

Orrick had just emerged from that battleground. He was in shirtsleeves, his suspenders visible, sleeves rolled up.



Associated Press Wirephoto

William Horsley Orrick, Jr., points to pins on a map showing locations of antitrust investigations.

To illustrate what he's getting at in new antitrust policy, Orrick thrust a hairy arm toward a wall map of the United States. Little flags clustered about the major cities, where antitrust field offices are located. Red flags indicate criminal antitrust suits, blue flags civil suits, orange ones grand-jury investigations.

Away from the major cities, the flags are sparse or nonexistent.

"That's why I'm changing our emphasis," Orrick said. "An unscrupulous businessman in Spokane isn't any more interested in obeying antitrust laws than the man in San Francisco, where our field office is."

While 70 percent of antitrust cases stem from behavioral problems in business, Orrick said, only 30 percent are concerned with structural problems. With his new approach, he hopes, these figures will change.

He recently told a New York law group that companies in a particular group may be operating in complete contravention of law, "yet they may also have so fastened their hold on the industry as to have settled into a comfortable, amiable groove of non-competition, which produces no newspaper headlines and no complaints from businessmen, Congress, or the public." He added:

"I have no doubt that it is my duty to scrutinize such situations carefully."

Orrick took over the antitrust task from Lee Loevinger last June, when Loevinger was named to the Federal Communications Commission.

At Attorney General Robert F. Kennedy's behest, Orrick formed a policy-planning group from among his 292 antitrust lawyers and 30 economists.

Their task is to decide whether a reported business abuse merits a full-scale investigation of the industry involved.

"We're just now getting this program off the ground," Orrick said. "A few studies are under way right now. I can't tell you what industries—but at least we've started."

Outlining Administration antitrust policy -- 1964.

Crime Committee co-chairman William J. Orrick Jr. and Moses Lasky

—UPI Photo

Why Lasky Is the Spokesman

Why is Attorney Moses Lasky the chief spokesman for the City Crime Committee?

Lasky shares the committee chairmanship with Attorney William H. Orrick Jr.

Orrick was Assistant Attorney General in charge of the U.S. Department of Justice's Anti-Trust Division in President Kennedy's administration. He has been an active spokesman in many past political campaigns.

Lasky is a member of one of The City's most respected law firms.

Orrick says that Lasky was "chosen" as spokesman for the committee "because he is most articulate."

"He and I have worked very closely together on these reports, editing and re-editing them as lawyers working on a legal brief," Orrick said.

"The only reason that I have not attended all of the press conferences and some of the committee meetings is that I have been either out of town or in court.

"I support everything in the city crime reports," Orrick said.

Lasky also prepared a lengthy defense of the committee's reports which The Examiner published in its Editor's Mail Box column last Wednesday. It was signed by Lasky as co-chairman but bore no other signature.

With Moses Lasky as Co-Chairman of the San Francisco Crime Commission.
San Francisco Examiner, June 19, 1971.

And he left. He got his answer, and he immediately branched out into other businesses. It became one of the most diversified companies in the country. He took it to South America. The telephone is just a very small part of it. I don't know what has happened to it since. He is dead now, I think.

4. Politics and the American Can Case

Van Nest: Did you have any notable run-ins on Capitol Hill during your years in the Antitrust Division?

Orrick: I always tried to make myself available to any congressman or any senator because I know how important it was for them to be able to satisfy their constituents that they had talked to the proper person in the government. Most of the time, I had the senator or the congressman come to my office.

One day Senator [Robert C.] Byrd from West Virginia called and said he would appreciate it very much if I would come up and talk with him privately in his office about some matters.

Van Nest: What was the matter that Senator Byrd was concerned about, and what had been the history of the problem?

Orrick: Senator Byrd was concerned with a divestiture order that had been made in the case of the United States against Continental Can Company, which had merged with Hazel Atlas. The court required that Continental get rid of the two Hazel Atlas plants in West Virginia. The problem, for the people in that poor community, was that it meant closing off over 2,000 jobs.

But Senator Byrd didn't tell me that was what he was going to talk to me about. When I got up to his private office, his secretary said, "Oh, the Senator would like to see you in the

conference room." I said I was going to talk to him privately in his office.

She said, "Well, he is waiting for you in the conference room."

So, I went into one of these enormous hearing rooms scattered throughout the Senate building. I could hardly get in, there were so many people. The Senator was sitting up at the head of the room, and he said, "Come right up here, General Orrick." These hostile people frowned at me as I came in, and he said, "I want you to sit right here, and I want you to tell these good people from West Virginia just exactly why you have made my government, our government, take 2,000 jobs away from these fine people. And I can tell you that every labor leader in West Virginia is here; the editor of every newspaper is here; Governor [William Wallace] Barron is sitting right here; Senator [Jennings] Randolph is here; and Representative Arch Moore is here. And we just did want to hear from you."

Van Nest: You knew you had been had?

Orrick: I had been had. Fortunately, one of the people present whom he didn't mention was the counsel for the American Can Company, who was seated near the Senator. And I said, "Senators, Governor Barron," and so on, "I would be very pleased to tell you exactly what we are doing. But there's one person in this room who knows a lot more about it than I do, and it's Mr. 'so-and-so,' who is sitting there" -- in his dark suit and his starched collar -- "who is general counsel for the American Can Company, and who was present in court at the time that the judge made this divestiture order, and who approved divesting the Hazel Atlas plants. And Senator, I suggest you call on Mr. 'so-and-so' of the firm of Davis Polk." So I sat down, very pleased with myself, and this other lawyer had to get up and make some remarks. And I slipped out the door.

Van Nest: Having made the proper introduction?

Orrick: Right.

Van Nest: Was there some further activity on that case?

Orrick: Yes. Senator Randolph had always been a great friend of President Johnson. So, I got a call from him one day and, as he put it -- other people would do this, which always annoyed me because they thought I would be much more amenable to their suggestions -- he said, "I am calling from the White House. I have just been talking to the President, and I would like to come over and see you."

And I said, "Certainly Senator." So, he came over and said, "As you know, I have been to the White House, and I have just been talking to the President."

I said, "Yes, sir."

And he said, "I want you to put an end to this business about Continental Can Company divesting itself of the Hazel Atlas plant."

I said, "I can't do that, Senator, and you know that. The judge has ordered it. It's the law, and I simply can't do it."

He said, "Well, I anticipated that. I will tell you that, if you don't do it on Thursday next commencing at noon, this building is going to be surrounded by automobiles driven from West Virginia so that nobody can get in or out."

I said, "Senator, you do what you think is right, and I will do what I think is right."

I told Bob Kennedy and my colleagues about this. They didn't believe it, until Thursday, when all these cars showed up and, where it was necessary to double park, they double parked, and they went right around that enormous building. It was true that nobody could go in or go out.

Van Nest: And Senator Randolph was in the lead car?

Orrick: I didn't bother to see.

Van Nest: Did the divestiture go through as planned?

Orrick: Yes.

5. The Antitrust Barristers

Van Nest: Did you have occasion to meet with some of the prominent antitrust lawyers of the day while serving as chief of the Antitrust Division?

Orrick: Yes.

Van Nest: How much time did you spend with lawyers?

Orrick: I would spend my mornings working over complaints, letters and so on with my top staff, and almost every afternoon, at least three hours, talking to lawyers whose clients wanted to merge or do something that was close to, and maybe governed by, the antitrust laws. What I did was have every member on my staff who had had anything to do with the problem present in the big conference room. That began with the lowest- ranked person in the economic section to my top staff, Bob Wright, Murray Bring and so on. Then the lawyers would come in, and I would introduce the staff. And they would talk to us and find out what we were thinking about particular problems. It was useful for them, and I think it was useful for my staff.

Van Nest: Can you give us some examples, Judge Orrick, of the best antitrust barristers that you saw from time to time?

Orrick: I can begin with Arthur Dean, who was head of Sullivan & Cromwell at that time; Hammond Chaffetz, who was the top partner in Kirkland & Ellis in Chicago; Abe Fortas, who was in Arnold, Porter and Fortas; Judge Rifkin. I saw them all. And the reason was that antitrust was very much on the minds of our corporate leaders. They always turned to the top trial men in the firm for advice. Some of these men did almost nothing but

antitrust work.

Van Nest: What do you remember about Hammond Chaffetz from Kirkland & Ellis?

Orrick: Hammond was a character. He used to be in the Antitrust Division. And, with all my staff present, he would come in and say "Well, Bill, you still have the same dumb people that used to be here when I was here. I would think you could clean some of these fellows out."

And I would say, "Hammond, that is a marvelous way, as an advocate, to get my staff to listen to precisely what you want."

"Oh, they know it. They know it perfectly well. It doesn't do them any harm to know that I still know it." Hammond got very little from the Antitrust Division.

Van Nest: What about Abe Fortas? Was he a close personal friend of President Johnson's at that time?

Orrick: Yes, he was a very close personal friend. He was the one to whom Johnson gave the eighty-seven ballots in the famous landslide Johnson election in Texas. You will recall that he managed to garner eighty-seven ballots and take them up to Washington. He put Fortas in charge of them, and that is the number by which he won.

But Fortas was a New Deal wonder boy and an absolutely superb lawyer and an even better advocate. I remember that he represented, I think it was Procter & Gamble, and he wanted to save the name "All" for Procter & Gamble. And he would give the Antitrust Division all the rest. It was something like that. When most lawyers left the room, the staff would turn to me and say, "Now what do we do?" And I would say, "You tell me what we do."

But when Fortas left, they would not say, "What do we do?" I said, "The meeting is adjourned. We will not decide this request of Fortas' for at least twenty-four hours or maybe forty-eight hours."

Because he was so gifted as an advocate, he could take you down any road that he wanted. I have never heard a better one, and I have certainly heard more than my share of fine oral advocates.

Van Nest: Can you recall any of the special circumstances which brought Judge Rifkin into your office?

Orrick: Yes. I remember one time he called and wanted to talk to me. I was delighted. He came down from New York. I really looked forward to it because I had admired him as a federal judge, and I knew he was a great advocate. I looked forward to a very pleasant time with him. I knew he would have good briefs.

So, he came in, carrying his briefcase, and I looked at it approvingly. We sat down, and he said, "General Orrick, this case is a simple case." And he reached down into his briefcase, and I thought, "Oh boy, I am going to get the brief right now." But, instead, he pulled up some suspenders and said, "The question is whether such-and-such a suspender company can buy another suspender company."

I said, "Judge, perhaps you can decide that one yourself. I am not about to become an expert on suspenders." So, we talked about some other things, and he left. He was a charming man.

When I was in private practice afterwards, I was in a case with some really good lawyers, with Louis Nizer and Whitney Seymour and Judge Rifkin. I reminded Judge Rifkin of the suspender story, and I said, "I presume that you are not going to do the same thing to this judge, Judge Palmieri, that you did to me with the suspenders."

Van Nest: He got a kick out of it?

Orrick: He got a big kick out of that.

Van Nest: What about Clark Clifford? Did you see a lot of him?

Orrick: No, not a lot. I saw people from his office and, on very important things, he would come over. Those Washington lawyers are superb.

They know their way around the city.

I had great regard for Clark. There's one time I remember, right after I had gone to work in the Division. A meeting had been set up. I came into this large conference room, and there were most of the big antitrust lawyers in the country, beginning with Clark Clifford and Arthur Dean, Taggart Whipple, Warren Christopher, Whitney Seymour and others.

Then I was introduced to one of their clients who was sitting there, Mr. D. K. Ludwig, of whom I had never heard, but I was shortly advised was the wealthiest man in America at that time. I don't know if he still is. But at that time he was. And he was going to buy from Phillips Petroleum -- I think that's right -- the Tidewater Oil stock from Phillips Petroleum for fifty million dollars. He wanted to know what I thought about it. I hadn't thought anything about it. I told him that and went out of the room with one of my litigators, who was an expert in the oil industry called Harry Sklarsky.

I said, "Harry, who is this guy?"

And Harry said, "I don't know."

I said, "You don't know? That is your job, for heaven's sake. Should we approve a sale of fifty million dollars worth of stock to this guy?

And Sklarsky said, "I don't know."

I said, "We will we have to find out."

So, we checked around and found that he was good for it and that he owned a lot of freighters. That is where he made his dough. And it seemed all right to us. So, we eventually approved it, and we learned six months later that he had sold the stock for a hundred million dollars to some company. I guess that is the reason that rich people get the best lawyers.

6. The Assassination of John Kennedy, and the Johnson Administration

Van Nest: The assassination of John Kennedy was certainly a traumatic event for the nation. What can you remember about that period of time in Washington, D.C., and the effect it had on people there?

Orrick: It had a most traumatic effect on the people there and, I guess, all around the country. It was a tremendous shock, as everybody will remember, because you can always remember where you were. I was having lunch with Brandon Grove over in Georgetown at the time. We started out to Hickory Hill to see Bobby, but they had, by that time, closed off all the roads.

The government was just dead. Nobody could do much of anything there until the funeral was over and so on. President Johnson lived near our place on Rock Creek, and we would see him coming by every day in his limousine going down to the White House. But you couldn't get anything done in the office. It was just a general period of mourning and wailing.

Van Nest: What was the impact on Bob Kennedy?

Orrick: It was just terrific. He was downhearted. It just took all the spunk, so it would seem, right out of him. He could talk about it with great difficulty only. I went out the next day and had a talk with him. It was just very, very difficult. He didn't know what to do or how to do it. And Johnson, of course, hated the Kennedys and all the Kennedy retainers and friends and everything else, and it created an unbridgeable dichotomy.

Van Nest: Was there any real discussion or relationship between Bob Kennedy and the new president?

Orrick: Just not at all. And the new president made, in my view, a serious error by not, in due course, having all the Kennedy people resign and putting his own people in there. That is the only way you can get something done in the government. I think, by leaving everybody there, he thought that, at least until he got a chance to

run, the American public would like that. But it was clearly the wrong thing to do.

Van Nest: Why?

Orrick: Because he couldn't get anything done. Everybody was saying, "Well, the Kennedys would have done it this way or that way." He didn't want anything to do with the Kennedys, and there we all were: Bill Wirtz as Secretary of Labor; Bobby as Attorney General; Ed Day, the Postmaster General; Stewart Udall, Secretary of the Interior; Bob McNamara, of course; all the closest friends of President Kennedy; and Dean Rusk. I think he got along better with Rusk than anybody else.

Van Nest: What impact did the change of administrations have on your work in antitrust?

Orrick: Well, it took a lot of the interest out of it. Johnson didn't know anything about it. He used it as kind of a pawn in the complicated games that he played. He wouldn't see anyone from the division. I asked several times if I could go over and talk to him, and I did that whenever I would get a phone call from one of his staff telling me to dismiss a lawsuit.

I would tell him, "I can't dismiss that lawsuit, and I am sure the President wouldn't want me to, if he knew the background of it. May I come talk to the President?"

And the special assistant said, "No, no chance."

So, most of the time, Johnson went through Katzenbach, who was then Acting Attorney General. A couple of times, Katzenbach would call me up and say, "I want you to dismiss that case." I would tell him, "You dismiss it. I am not going to dismiss it. It's improper. They violated the law, and they are being prosecuted. I haven't any intention of dismissing it." That didn't improve my relations with Katzenbach at all.

Van Nest: Did Johnson seem to have any interest in antitrust policy?

Orrick: None.

Van Nest: What about Katzenbach? Was there any effort made, during his tenure as Acting Attorney General, to formulate antitrust policy?

Orrick: No. He had a lot of other things on his plate, and he just didn't approve of the whole business.

Van Nest: Did you have a difficult time, in that last year or year and a half, getting the go-ahead to file some of the cases that were on the division's docket?

Orrick: Yes, indeed. They made Ramsey Clark the Deputy Attorney General. Ramsey didn't know much about it. Nick didn't have much confidence in Ramsey, so it was exceedingly difficult to get any case filed.

Van Nest: Can you recall any specific cases that you had a strong interest in that you were unable to get on the table as a result of that kind of resistance?

Orrick: I remember a merger case in Louisiana about two rice companies.

Van Nest: What happened there?

Orrick: We wanted to bring an action, and the Acting Attorney General wouldn't sign it. He told me to forget it.

Van Nest: What about the case against AT&T? Was that something that was discussed again in the Johnson Administration?

Orrick: Not until the very end. One of the last things that Ramsey did as Attorney General was file that AT&T case.

Van Nest: That was after you had left the department?

Orrick: That was after I left the department.

Van Nest: Why did it take so long to get that case to court?

Orrick: Because it was a cinch that the President would not have approved it.

The Kennedy holdovers did a lot of things in those last days. Secretary Udall changed the name of the football stadium in Washington from Redskins Stadium to Kennedy Stadium, RFK Stadium, I believe they called it. And they changed names on one of the launching sites. Cape Canaveral became Cape Kennedy. I think it's been renamed Cape Canaveral. Johnson got the space center in Texas named for him.

Van Nest: Did you have occasion at all, as chief of the Antitrust Division, to do any hands-on investigating yourself?

Orrick: Just once that I can recall, and it was done under unusual circumstances. The department had five grand juries going in various parts of the country investigating the scrap steel industry and alleged price fixing by the defendant companies. The buyers were Japanese, and I asked our Ambassador to Japan, Edwin Reischauer, to Japan to speak to the presidents of the important steel companies and find out precisely to whom they had spoken in the government that they thought gave them some kind of immunity from the operation of the antitrust laws. In the summons it said "Edwin Reischauer."

Ambassador Reischauer was unable to do that, but he suggested that I come out and that he would arrange meetings with each of the persons whom I requested to see. I did this because in no other way could the department obtain information sufficient to make a decision whether to continue trying to make the case through the grand juries or to dissolve them.

The meetings were arranged in a hotel room. The president of the Japanese company would come, always accompanied by an interpreter, and I had an interpreter from the American embassy. The president invariably spoke excellent English. But when we would start our session, he would immediately revert to Japanese. I would ask the question in English, his interpreter would interpret it to his president in Japanese, the president would think about it, and then he would say to his interpreter in Japanese what he

thought the answer was, and then his interpreter would tell me in English what the answer was.

This was extremely tedious and took a long time, but I realized that it was my duty to do all five of them. I soon got quite interested because the answers to my questions from each of them was identical. For example, when I asked which American government official had approved the transaction of the sale of the scrap steel, each person interviewed replied "Averell Harriman," who was then Secretary of Commerce.

I would then ask them what a lawyer asks people, namely, when was the conversation and where was it and who was present and, to the best of your recollection, tell me what each one said. And their answers to that were identical, down to the point where each time, just to test my theory, I would ask them how Secretary Harriman was dressed. The answer in each case was that he had on a pin-striped blue suit with a red necktie tucked in a particular way into his vest. And the words used were simply identical.

It was plain to me that they had collaborated on the answers and had agreed to let the first person who was interviewed set the pace. They simply copied what he did.

Van Nest: Was there any other way to compel the testimony of these Japanese officials?

Orrick: None that I knew of. And the result was that we scrapped the five grand juries.

Van Nest: Judge, what do you think were the greatest accomplishments during your tenure in antitrust?

Orrick: I think my greatest accomplishment, if you can call it that, was to do my job, which was to pull the division together, see that we got operating, knowing what everybody else was doing. On occasion, I would attend a part of the trials and would have an opportunity to talk to the lawyers and keep their spirits up. I don't think we made any great changes in the American economy. We headed it in the right way by the type of cases that we brought and by the close

scrutiny that we gave to mergers.

Just as soon as that stopped -- it really stopped toward the end of the Nixon Administration -- the division went off the film. Antitrust lawyers lost their jobs. In the big firms, they dissolved their special antitrust sections and all that kind of thing, not that I think that is bad. What I think is bad is that they have let behemoth corporations run the country.

Van Nest: Did you leave before the end of the Johnson Administration?

Orrick: Yes, I left in August of 1965.

Van Nest: Why did you decide to leave at that time? Johnson had another three years to go.

Orrick: Well, he did. It wasn't any fun working there. We all wanted to give Bob the most support that we could. He left to run for the United States Senator from New York in September, I guess, of '64. We had all had things started then. In early '65, I think Burke Marshall was the first to leave from the Civil Rights Division, and then Jack Miller left. He said, "Don't get tied up in this Johnson Administration. You will regret it for a lot of reasons." And then, I guess, I left about that time.

Van Nest: Were you anxious to get back to private life?

Orrick: Not particularly. What I wanted was to get out of the Johnson Administration. And I didn't want to stay in Washington. Half the fun in Washington was participating in running the government. Although our kids were in school there, and they were doing fine, I thought I had better get back on the job here.

V. 1965 - 1974: LAW AND COMMUNITY SERVICE

A. Returning to the Practice of Law

Van Nest: After leaving your job in Washington, did you return to San Francisco?

Orrick: Yes. And I went back into the firm.

Van Nest: What sort of work did you take up once you returned to the law firm?

Orrick: Well, almost entirely antitrust work. When a person has had a government job as important as that job, or as a member of the Securities & Exchange Commission or some other job, he often brings with him people who have problems with the government and think that he has some contacts that can help him. And that is true to a certain extent.

Van Nest: Was there a revolving-door rule then, as there is now, that prohibited you from practicing in Antitrust Division matters for a year or two?

Orrick: No, there wasn't. And the practice of antitrust law was, I think, at it's zenith in San Francisco at that particular time. I never was quite sure why this was so, but we did have one of the greatest plaintiff antitrust lawyers in the country in the person of Joe Alioto. And for some reason, maybe because of the composition of the

court, numerous plaintiffs out of town filed suits out here.

When I had left in 1961 to go to Washington, there were about twenty-five lawyers in the firm. When I came back, there were about thirty-five or forty, and only five people doing litigation. Now there are one hundred sixty in the firm, I have been told. I had to build that litigation department, if I was going to handle these antitrust cases. And that I did, because not only was I employed by local companies with officers with which I had been thrown into contact before going to Washington, but also the Washington and New York law firms. And those from other cities had all been in my chambers in Washington, and I always attended the antitrust section meeting of the American Bar Association. I was actually a member of the council, ex officio, on account of my position as Assistant Attorney General.

So, we did a great deal of what you might call local counsel work, where you either just carried the briefcase of your friend to the court, or you did the entire job and reported directly to him, or her, as the case might have been.

Van Nest: You mentioned that many out-of-town plaintiffs filed suit here in San Francisco because of the composition of the bench. Who was sitting on the federal bench in the Northern District at the time?

Orrick: At that time, Lloyd Burke was on the bench. I had known him since law school where he was a class ahead of me.

Then Al Zirpoli -- I mentioned him before in connection with politics -- and he claims that when I went to Washington I tried to keep him off the bench. And, to a certain degree, that was true. We have laughed about it often.

Van Nest: Why?

Orrick: Well, because when we first came back here, Byron White wanted names for the best U.S. Attorney. Zirpoli would have been far and away the best U.S. Attorney that we could have had.

Van Nest: What was his background at that time?

Orrick: He practiced a good deal of criminal law in the federal court. It was almost entirely federal court practice. He had been a member of the Board of Supervisors for four or five years, and he was a polished cross examiner, just a superb trial lawyer.

I said, "Al, the Kennedys want you to be United States Attorney for the Northern District."

He said, "I don't want that. I want to be a Federal judge."

I said, "Now look. There's no question about it. You will be one, but the Kennedys don't like to be turned down."

He said, "Well, I will just keep that in mind."

Thereupon, he got on a plane and got hold of his friend -- who ran the Italian American Society -- and that friend took him up to meet Bob. Bob had a secretary who was of Italian descent. They all had just a splendid time talking.

He then was sent down to talk with Byron White, and when Byron saw him, he said, "How would you like to be the next United State District Judge in San Francisco?" And Zirpoli said to his Italian comrade that that was exactly what he had come to do. He has been just, I think, the best trial judge on that bench ever since. First rate.

Judge George Harris was Chief Judge during part of this time as was Chief Judge Oliver Carter who succeeded Harris. Albert Wollenberg, William Sweigert and Stanley Weigel were also sitting at that time.

Van Nest: Did you have something to do with his appointment as a judge?

Orrick: Yes. As I mentioned earlier, Byron and Bob wanted us to make a check on every person whose name had been submitted from our area. At that point, they were looking for a Republican, and Stanley was the only Republican that I thought would fit in with the Kennedys.

Actually, there were a great many others, namely Jack Miller,

the Assistant Attorney General in charge of the Criminal Division, for one. Stanley was duly appointed, and when I came out, he was trying a case brought by the Government against a beer company. I knew something about the case from my experience in Washington, and all the correspondence that went out bore my name or initials.

So, the defense lawyer made the mistake of calling me as a witness against the Government. I couldn't believe that, but when he served up those questions, I explained that I knew something about the case. I told him what I had done, but, nevertheless, he asked the questions. He kept trying to make me say something that would redound to the detriment of the Antitrust Division, which was very foolish of him.

Van Nest: What was Judge Weigel's background prior to being appointed a judge?

Orrick: He practiced law in the firm of Landels, Weigel & Ripley. And he had helped in the Graves campaign. He had also taken a stand on the loyalty oath problem which was going on over at the University of California, and he seemed ideally suited for a judgeship.

Van Nest: What was the loyalty oath problem?

Orrick: The State of California Legislature required every professor, or employee even, at the University of California to swear that he wasn't a communist. I remember that Judge Weigel represented Professor Hildebrand, who refused to sign the oath, as did many. At that time, the Board of Regents was split right in the middle as to who should sign it and who should be allowed not to sign it. It was a very ugly Joe McCarthy type of situation that hurt the University a great deal.

Van Nest: Who else was sitting on the bench at that time?

Orrick: Judge Schnacke. I remember arguing a matter before Judge [Robert] Schnacke having to do with a change of venue, or some other such thing. Bob Raven of the Morrison [& Foerster] office was on the other side.

Van Nest: How did Judge Schnacke come to be appointed?

Orrick: Well, he had been a United States Attorney. He had been Assistant Commissioner of Corporations, and he came to our court directly from the Superior Court of San Francisco.

Judge [Samuel] Conti was on the court. I may have had a few matters with him, and the same with Judge [Spencer] Williams.

Van Nest: During this period of time, after you returned to San Francisco, who were the prominent civil trial lawyers practicing in the Northern District?

Orrick: You can't mention an antitrust lawyer in America without mentioning Francis Kirkham, who was, and I think still is, a great lawyer.

Van Nest: Where did he practice?

Orrick: He practiced with the Pillsbury [Madison & Sutro] firm. He was superb. Bob Raven and Dick Archer of the Morrison firm at that time were rated very highly. Morry Doyle in the McCutchen [Doyle, Brown & Enersen] firm was the perennial lead counsel. One of the finest lawyers in the country then, and now, is Moses Lasky, who at that time was in the Brobeck [Phleger & Harrison] office.

Van Nest: Was there an active plaintiffs' antitrust bar, as well?

Orrick: Yes. Outstripping all the plaintiffs' lawyers was Joe Alioto. Joe Alioto is a superb trial lawyer. All during the war, he had worked as an Assistant United States Attorney, I think, under Tom Clark, doing all the antitrust work that was done out here. So, he had plenty of experience. They came from all over to get Joe as counsel. And then the perennial plaintiffs' lawyers from Philadelphia and Chicago and New York would come out here. Antitrust, as I noted earlier, was a very big field at that time.

Van Nest: Did you have occasion to litigate some antitrust cases against Alioto?

Orrick: Yes. One case involved H&R Block, who called themselves "the income tax people." Joe's client was the H&R Block representative for Northern California. The H&R Block people wouldn't give him any more territory, so he had some kind of a monopoly case under Section 2 of the Sherman Act, which had to be settled. There wasn't any question about that.

Joe, at that time, was just about to become Mayor, so he did all his antitrust work, or a good bit of it, in his home, as well as in the Mayor's office. I suggested we have a settlement conference. I said I would get Henry Block out from Kansas City, who was the head of the firm, which I did, and said we would meet him here at my house at 7:30.

I had the Kansas City lawyer and the president of the company here, and I told them what would happen. I said, "As soon as Joe comes in the house, he will take charge. We will be sitting in here, and he will take one of these other rooms. This is the way he always negotiates, walking back and forth."

They were surprised.

"You let him do that in your house?"

I said, "Do you want to get a settlement or not?"

They said "Yes."

So, I said, "All right."

Joe came with his client. After a little coffee and brandy, Joe said, "Now, do you mind if we use your library? And you fellows stay here."

I said "No, that is fine."

He walked back and forth between the two places all evening. Finally, at midnight we had an agreement.

Van Nest: What other significant cases did you handle during the period of

time before you were appointed to the bench?

Orrick: The biggest case I had was an antitrust case brought against Rockwell Manufacturing Company, now North American Rockwell, charging it and the four other manufacturers of water meters throughout the United States with monopoly and price fixing. There were some 23,000 end users of water meters. And the counsel for Rockwell who had employed me said that no expense should be spared.

Colonel Rockwell had never before been charged with being a conspirator, let alone violating the laws of the United States. He wanted the most thorough job that he could get. Under those conditions, and with the other companies represented respectively by John Hauser of the McCutchen firm, Tony Dungan of the Brobeck firm, and some other lawyers, I was selected as lead counsel.

For the next sixteen months, at least, I was continually involved in taking depositions, attending depositions, arguing motions in various courts in the country, and trying to learn all I could about computers and how they entered into the importance of this water meter litigation. At the end of three years, John Hauser's client settled. I told the able counsel for Rockwell, George Flinn, when I first got into the case, that I was certain I could settle it for $10,000, that it was a lawyer-made case because each time the bids were taken they were always very, very close, and there was never an iota of evidence that there had ever been collaboration between those manufacturers.

George told he me that he discussed that with Colonel Rockwell, and the Colonel said, "No sir, I won't settle for anything." At the time I came on the bench, the litigation was going and went for about one more year, at which time the North American Company bought Rockwell. When it found out its exposure, the case was settled for $560,000. It makes you cry, doesn't it?

Van Nest: After all that?

Orrick: Yes.

Van Nest: Was it a $10,000 case?

Orrick: To this day, I believe it was. We had professors from Columbia, Missouri, experts in computers. For heaven's sake, North American Rockwell put a man on the moon. They made calculation after calculation on these hundreds of bid reports. As I say, we took countless depositions of city officials, the city manager, the manager of the water department, the mayor sometimes.

Van Nest: And this was in cities all over the country?

Orrick: In cities all over the country. I did nothing but travel that year. And there wasn't a single piece of evidence against Rockwell. I think that was the biggest private litigation I was in, even including the Miller & Lux case we have discussed previously.

Van Nest: Was there a case that drove you into the arms of the federal bench, Judge Orrick?

Orrick: Yes, there was. This was in about 1973. Our firm represented Transamerica Corporation, which owned all of the stock of Trans World Airways. It was a wholly owned subsidiary of Transamerica. The airplane company leased a DC-6, or a DC-8 -- I am not sure which it was now -- to Singapore Airlines Limited, not to be confused with Singapore Airlines, the main carrier of Singapore.

The lease was carefully drawn by my partner, Bill McKee, and covered every possible contingency. However, at one point, the airplane company stopped getting rental payments from Singapore Air Limited. And, like a stroke of magic, not only the airplane but Singapore Airlines Limited had vanished.

The president of Trans World Airlines was justifiably concerned. He gave me the job of getting the airplane back, getting the back rental, and so on. I didn't know where to start. So, I began with some of my former colleagues in the State Department and also in the Department of Commerce. They explained to me the way business was done in Singapore and, in particular, how one employed lawyers there and what obligations they were under.

Simply stated, everybody in Singapore at that time -- and I am told right up to now -- does precisely what the president or prime minister -- I am not sure which -- tells them to do. It prides itself on being run as Greece was in the age of Pericles. The streets are always clean; there's absolutely no crime of any kind, nature or description; no drugs. American companies can come over there and take advantage of the very low cost of labor, which a lot of them have done.

Van Nest: Was there just no sign of the airline anywhere in world commerce?

Orrick: There was no sign of the airline. I then decided to get out on the ground, and I flew out there. But first, I had asked the State Department to have the American ambassador make an appointment for me to see the attorney general. When I reached Hong Kong enroute to Singapore, I had a cable saying, "Impossible to make this appointment."

Being halfway around the world then, I decided to go on out. I went out there and called on the ambassador. He was most cordial. He said, "I have tried again to get this appointment for you, but I couldn't possibly do it. Mr. Lew says 'no.'"

I said "Well, isn't there anything you can do?"

He said, "No."

I said, "I am going downtown. I have got to litigate, I guess."

So, I went downtown. I went from solicitor's office to solicitor's office, trying to find a solicitor or barrister who would represent us out there. As soon as they heard I was going to sue the Government of Singapore, they said absolutely no, we couldn't do business out here.

I had about given up, when the American ambassador said he would make one more try and make it clear to the foreign minister that it was part of the business and policy of the United States. He did that, and finally he got me an interview for a brief period with the attorney general.

I told the attorney general my problem. He said, "Well, the airline went bankrupt, but I will see if we can find the airplane." It turned out that the pilot of the airplane had heard about this sudden bankruptcy, where everything was going to be shut down as far as this one airline went, and had taken the plane to Hong Kong, awaiting further orders. He finally flew it back to the United States.

I brought back to the United States an agreement from the attorney general that we would exchange briefs and that he would come to the United States, come to San Francisco, to discuss the matter with me next time. It would be his turn.

Van Nest: What was left to discuss was the outstanding lease payments, I take it.

Orrick: Yes.

Van Nest: The plane was back?

Orrick: Yes. The plane was back but in very poor condition. After lengthy correspondence with him, and preparing memoranda and briefs and so on, I called him on the phone and said if he wouldn't come here, I would go out there, and would he please be ready to talk with me, that this was the last time.

I said, "I hate to talk like this, but I am going to litigate with your government. There are plenty of things here in the United States in which the Government of Singapore has great interest. Among others, we can attach any of your planes of the regular airline when it comes and make it difficult for the ambassador to do things", and so on.

He said, "All right, all right. That is fine. We will settle it."

So, before I went out, I got the president of the airline, Hank Hough, to come over. And with my able partner, Bill McKee, I said "Hank, what do you want?"

"Well," he said, "we have got the plane."

I said, "I mean in money. Because if I tell them I am going to litigate, I am going to litigate. I don't negotiate any other way. Now, if he won't pay more than a million dollars, shall I say we are going to litigate?"

And he said, "Oh, no, no, no, no."

I said, "750,000?"

"No. That is too high."

I said, "Well, you run the airline. What is it?"

And I think McKee might have said, "500."

And Hough kept saying, "No."

I said, "When do I tell him we are going to litigate? At a 150? Or how about 100?"

"Make it 50."

I said, "If they won't give us at least $50,000, then I can start litigating. Is that the understanding?"

"Yes."

So, I took his vice president in charge of finance, or something like that, who knew something about the airplane, and had him list everything that was wrong with the airplane, from the type of switches that they had lost, all the operational things that were wrong with it, plus the payments for the lease. And I went out there. The attorney general was most cordial, and assigned his deputy to negotiate, and we sat down.

Van Nest: This was back in Singapore a second time?

Orrick: Yes. The attorney general was there with his man. I was there with the vice president.

I said, "Let's take this list of things. I will draw a cylinder. It looks like it costs $80,000. That was not on the plane."

"Well," he says, "I am not so sure that it wasn't on the plane."

I said, "Okay. Let's pass that. Then, for example, I would say, "This Notazari wrench, which is normally in between these two cylinders, was broken. I understand that is only worth about $15,000."

He says, "That is okay."

I said, "Fine. Let's put a check after that."

So, we went down the list. By the time we had gotten to lunch time, we had everything on the list, except three or four pretty big items. The Transamerica guy was excited as he could be. I would tell him "Be quiet. Don't you say a word. We will come back after lunch and discuss these other points." We were well over a million dollars before this point.

Van Nest: Before lunch?

Orrick: Before lunch. When we came back afterwards, I said, "What do you say? Can we start in on this top item, this cylinder?" He said, "I think so."

Then we came on the next questioned item, and we argued about it a little bit. I said, "I don't know enough about it, and I have confidence in you. If you tell me it's not worth that, I will accept that. What do you think it's worth?"

He said, "Well, I guess you are right. These are American figures?"

I said, "Yes."

He said, "That is all right."

To make a long story short, he agreed to practically every

number on our list. It aggregated some -- I am not clear on the amount -- but it was like $1,500,000 or $2,000,000. It was a Saturday, Saturday afternoon in Singapore.

I said, "How do you get the money?"

He said, "You can't get it Saturday afternoon. The Finance Office might be closed."

I said, "Let's just try."

He said, "Well, I have to talk to the attorney general." We went in and talked to the attorney general, and the attorney general approved it. The deputy took this bill, in effect, over to the finance office and said, "It's all right. But they won't be able to get a check for you until after 6:00."

I then went across the street to the branch of the Bank of America situated there. I told the manager, "I absolutely need to have the bank open when I deposit a check for this $2 million, which must be transferred to your branch in Oakland, California."

He said, "All right," and agreed to keep the branch open late so that I could deposit the check.

I went back, got the check, thanked my friend, whose name is Goh Phi Cheng, wished him good luck and took the check across the street and received advice that it had been deposited at the date and time at which I had said. So, I was pleased with that.

I took the plane back home the next day. It was just a terrible, terrible commute. I went into my partner's office and said, "How did you like that?"

He said, "That was great. That was really great."

I said, "What did the client say?"

He said, "As soon as the client heard about it, he picked up the phone to call his financial vice president, who was down in

Ecuador, and asked him 'Did Orrick have this case on a contingency?'"

Well, I will tell you now, as I have told many, many people, that was the end of the private practice, as far as I was concerned. That took my enthusiasm for the private practice down a good deal.

B. The State Education Commission

Van Nest: Had you spent some time during these years doing charitable activities?

Orrick: Yes. I had interesting times. I have always enjoyed the public work. When I first came back, Governor Brown appointed me as a member of the State of California Committee on Public Education. I had some distinguished colleagues on there, among them Irving Stone. The director of it was Newton Chase, whom I have known quite well. We met every Saturday morning for about a year, either at the San Francisco Airport or at the Los Angeles Airport, for all-day meetings.

Van Nest: Did the Commission have a specific purpose, or a limited, focused goal?

Orrick: Its purpose was to appraise the state of education in California to determine whether or not it could meet the changing conditions which were immediately ahead. At that time, there were about a million people a day coming into California, I think it was. I think Pat Brown used to say they had to build a new school every week. This was, of course, during the baby boom. Our report, I think, was, and is, an excellent report. But I have no reason to think that anybody read it other than ourselves.

C. President of the San Francisco Opera

Van Nest: You also had a stint as the president of the San Francisco Opera, did you not?

Orrick: Yes. I was president for three years of the San Francisco Opera. Our opera is one of the four best in the world, the others being the Met, La Scala in Milan, and Covent Garden in London. The main job that I had was to raise money.

We had an excellent maestro, Kurt Herbert Adler. He ran that opera with an iron fist. He negotiated all the contracts with the stars, with the musicians, with the costume designers, with everybody. He knew the music backwards. He conducted on occasion, and he lived for, and was, the San Francisco Opera. I can't speak highly enough about him.

But he was a taskmaster, and when I asked him for a budget, he would say "You don't need zee budget." And I said, "I have to have that because I know that we raise, by selling out the house every single night with performances, or whatever it is, only two-thirds of what it costs. The other third has to be raised by private contributions every year." At that point, it was a million dollars a year, which looked very, very big to me. Today, it's like $20 million. How they raise it now, I am sure I don't know.

But I said, "I must have it."

He said, "You cannot."

I said, "If you can't cut the budget, I will cut it."

"No."

I said, "I will give you one week." So, the next week, he came down to my office. He was mad. I said, "Have you cut it?"

"No."

And then I ran a line through one of my favorite operas, Don Giovani. He said, "Whoever heard of an opera company that did not have a Mozart opera once every two years? Nobody."

I said, "There it is. If you can save that much money someplace else, you can go and do it." I don't take my work home, usually, but I told Marion that night that, in one fell swoop, I had ruined the most important cultural activity in San Francisco, the only one that has international fame, and that is the San Francisco Opera. And the next day, to my surprise, but not to anybody else's, Kurt came up with a budget, which we could accept. Outside of that, the job was to raise money from every source that I could.

Van Nest: Did the Opera have an endowment at that point, or were you raising it on an annual basis?

Orrick: No. The opera did not have an endowment. I was particularly fortunate because the Chairman of the Board, one of the finest citizens in our state, or any other, had just retired as the Chairman of the Board of the Standard Oil Company of California. His name is Gwin Follis. It was largely due to him, and certainly not due to me, that we were able to raise these enormous amounts of money.

However, the first thing that we had to do was to go to the bank, hat in hand, and tell them that we were $450,000 in debt and we needed to borrow $900,000. Again thanks to Gwin, I think, the then-chairman of Wells Fargo, who was a good friend of both of ours, Ernie Arbuckle, said, "We will go with you on it." This money-raising went so well -- and we really hadn't covered all the bases -- that we started an endowment drive. We created an endowment of, I believe, six or seven million dollars. We had people, wealthy partners in investment firms, giving us whole operas. It was a great success.

Van Nest: Was this the beginning of the endowment that the Opera now possesses?

Orrick: This was the beginning. I am not sure that they do have an endowment at this point. But one of the perquisites of being a federal judge is that you are absolutely forbidden to raise money.

And that is almost worth the job itself.

D. The Eisenhower Commission on Violence

Van Nest: The late '60's and early 70's were a very tumultuous time on many college campuses. Did you get involved in some of the issues giving rise to campus unrest in the United States?

Orrick: Yes.

Van Nest: How did that come about?

Orrick: President Johnson appointed a Commission on Violence and asked Dr. Milton Eisenhower to be the chairman. Dr. Eisenhower was smart enough to name Lloyd Cutler, who was, and is, perhaps the best lawyer in the country, and who was counsel to President Carter, as the director of the Commission. Cutler got the specialists in all types of violence and crime and who had written books on it, people like Professor Skolnick, to serve on the staff. And then he asked for actual reports on what had happened, how violence got started. California gets blamed for everything. This was all before the Kent State unhappiness. Students of the University of California were said to have started the unrest on college campuses by starting the free speech movement.

Van Nest: You were appointed as the director of one of the regional teams?

Orrick: Yes. He wanted a detailed report on the trouble out at San Francisco State [College] and, to that end, I was able to get two excellent reporters, who were much interested in this whole problem, and to build up a small staff. They interviewed students and professors and police, both the chiefs and the Tac Squad commanders, as well as those who participated on the Tac Squad, and came up with an excellent report, which was published. We called it, Shut It Down, a College in Crisis. Besides working with

them and making suggestions and editing some of their reports, I interviewed then-Governor Reagan.

Van Nest: What did Governor Reagan have to say on the pertinent topics?

Orrick: He was interested only in the way blacks got into baseball. He said that blacks had a long way to go and that they should start in the minor leagues, as it were, and shouldn't be brought into the colleges. He gave the example of Jackie Robinson, who, as we all know, was the first black player in the big leagues, brought in by the Brooklyn Dodgers by Al Campans.

Then we started playing these games that baseball aficionados played. I asked him, "Don't you think that Satchel Paige should have had a chance at being in the big leagues, since they all said he was the best pitcher in all baseball?"

"Well," he said, "the country wasn't ready at this time to have colored players in the big leagues."

Then I said, "Look at Willie Mays, who came right to the Giants."

He said, "No, you are wrong on that. Willie Mays started in with the New Orleans Pelicans at the age of sixteen." And I think that he was right on that. I also interviewed Dr. Sam Hayakawa with about as much success. But the report is a very good report.

Van Nest: What were the key issues that had seemed to lie at the root of the problems at San Francisco State?

Orrick: They had black studies groups, and some of the blacks wanted to just keep it right for themselves, and others wanted it to be integrated in different classes. There was a general feeling abroad in the country at that time that the blacks had been held back, which they certainly had been.

There were occasional scuffles with white students. This violence got started when the Tac Squad of the San Francisco Police Department, which had been stationed in an out-of-the-way

place just off the campus and was to report to a particular place only upon command, lost control of their communications with the officer on the spot, who was to call them, if needed. They got the wrong signal and in they came. They came just at noon, when the students were all getting out. There was nothing in those Vietnam War days that infuriated students more than the Tac Squad in their very useful, but rather outlandish-looking, masks and armor. That started a strike and a whole series of events.

Van Nest: There was a set of demands from black students at San Francisco State?

Orrick: Yes. Also demands from the Third World Liberation Front. But the black students had, as I recall it, about ten demands, all centering around the formation of a black studies department. Those were the same type of demands that were being made all over the country. They stemmed, so we were told, from the violence at San Francisco State.

Van Nest: Were there also allegations of police brutality in connection with the investigation?

Orrick: Oh, yes.

Van Nest: What was the basis for those claims?

Orrick: Whenever you have the police, as I say, in their battle dress, as it were, they are trying to protect themselves, and so are the students, protecting themselves from the police. At that time, actually, there were several serious confrontations with the police, not the least of which was at City Hall, which, as you know has broad marble steps going up to the second story. There were protestors down at the foot of those stairs. There were protestors at the top, in the Board of Supervisors' chambers. The police turned firehoses on the people that were there and, literally, cut out from under them their footing. Down they went on their backs, some of whom, as a result, suffered very serious injuries.

Van Nest: Did the report reach any conclusions, either in the area of racial unrest or police brutality?

Orrick: It has several, I think, quite objective statements of conduct of students and police, which could probably be characterized as police brutality.

Van Nest: I know you have had a lot of experience as a judge handling cases concerning racial discrimination, some involving racial violence and certainly some involving police brutality. Do you think that your work on the Eisenhower Commission has influenced, in any way, the way you viewed these cases as a judge?

Orrick: Oh, a human being's views come from experience; and the law, as Justice Holmes told us, is not logic, it is experience. So, unquestionably, these experiences, as well as the experience at the Chicago Convention in 1968, right after Johnson took himself out of the race, all had an impact. It's part of being a useful human being, as well as a judge, to have some common sense, some sense of balance. But all of these experiences are certainly thrown into the balance on one side or the other.

Van Nest: Since you mentioned it, let me ask you about it. Did you attend that Democratic Convention in Chicago in '68?

Orrick: Yes.

Van Nest: Were you a delegate?

Orrick: Yes.

Van Nest: What role did you play at that convention?

Orrick: Not a very important role.

I was a member of the California delegation, and we were for [Hubert] Humphrey. Bob Kennedy had been murdered two months before. Jess Unruh was the chairman of the California delegation. And Marion and our kids came back. We were quartered in a downtown Chicago hotel, surrounded by police who were trying to move all the excitement about it and the protestors out to Grant Park. It was rather eerie to walk around downtown Chicago and never see an automobile, and people afraid to walk a

block or so to a restaurant. We would be taken out to the auditorium in buses with police escorts.

It was a thoroughly unpleasant experience for me. I think it was a very interesting one for the kids. Two of them started a boomlet for Ted Kennedy for President. Some enterprising TV reporter saw this little hole in the wall with pictures of Ted Kennedy. So, they enjoyed it and got a good experience out of it. But I decided that was about my last convention.

Van Nest: Why?

Orrick: Well, I had been a Democratic Delegate to conventions in '56, '60, '64 and '68. I didn't go to the [George] McGovern convention. It's an outmoded way of selecting candidates, not that it's not better than the way it's being done now. But it's outmoded.

E. The San Francisco Crime Commission

Van Nest: You had another opportunity to look at the operation and the functioning of the police with the San Francisco Crime Commission. What can you tell us about that experience?

Orrick: When Mayor Alioto commenced his term, he named Moses Lasky and Sheriff John Lohman from Chicago, and myself as co-chairmen of a commission to study crime in San Francisco.

Van Nest: Had there been some underlying problems in San Francisco that led to the appointment of the Commission?

Orrick: Just the usual, which you find in every city. San Francisco has its own special crime areas. But he wanted to know how well did the criminal justice system work. The Mayor appointed the other members of the Commission, which included Dianne Feinstein and Fred Furth, among others. We met regularly on Thursday nights

and, to our chagrin, we found that there was no money available to hire staff. Obviously, you need staff for a report like that. So, I got hold of Mac Bundy, who was president of the Ford Foundation at that time, and asked him if I could come back and make a presentation. He kindly consented to let me do that and financed the major part of the work that had to be done.

The first thing we did was hire a director, a mutual friend of ours, Irv Reichert, who was thoroughly familiar with the criminal justice system. Irv and his staff would make a presentation to the Commission, then Lasky and I would go over the reports that the staff wrote up as a result of their investigations and invariably rewrite them. Moses Lasky is a gifted lawyer and writer. He wrote the majority of the report. I helped him to the extent that I could, but most of the writing in the report is his. It's very clear.

The report is just as useful today as it was then. We made specific recommendations concerning operations of the police department, the jails, the public defender's office, everything.

Van Nest: The report was extremely critical of the San Francisco Police Department, was it not?

Orrick: It took great exception to some of the findings in our report. The report irritated the Mayor because the Mayor was a strong booster, as he should be, of his own police department. And he was, I think, surprised, maybe even chagrined, when we started to turn out these reports. We would always send a copy to his office first. The press were always anxious to get it. But one time, he had to read about one in the paper. He was highly irritated by that, and I didn't blame him, particularly. We didn't do it intentionally, of course.

Van Nest: The report was a controversial one. Let me show you some headlines again. The Chronicle story in June of 1971 headlines, "Very Critical Report on San Francisco Police Department", with the rebuttal from Chief [Al] Nelder indicating it's totally misleading, and reactions by the Mayor. And another story, also in June of 1971: "Crime Probers Hit Detectives Tac Squad," and Nelder again responding on page one that the report was disappointing, outdated

in major areas, neglecting to point out significant changes. Did you and the other members of the Commission realize how controversial the report would be when you wrote it?

Orrick: I don't think so. We did think that we would raise some hackles with our recommendation that marijuana be legalized. And we did.

Van Nest: Was there a lot of discussion on the Commission before that recommendation came out?

Orrick: Yes. The Commission had all the opportunity in the world to discuss it.

Van Nest: On July 19, 1971, an enormous headline appeared in the Examiner: "Legalize Marijuana for Adults, Crime Report Says, Sharp Minority Dissent." Were you among those who were advocating legalizing marijuana for adults?

Orrick: At that time, I think I was. I think I supported that. I wouldn't be for it today, I don't think.

Van Nest: Let me read what you apparently endorsed in '71 and ask whether you remember talking about it.

"The consensus at the present time is that the deleteriousness of marijuana, or its extent, remains largely unestablished. We know that a vast number of the citizenry cannot understand and will not accept the marijuana laws. Not all the ills or aberrancies of society are the concern of government." I take it you shared those views at that time.

Orrick: Yes.

Van Nest: Your view has changed?

Orrick: I think my views, so far as the deleterious effects of marijuana goes, have changed, largely because of the number of marijuana users that pass through my court and what they have been doing. But at that time, a Stanford professor had written a book, and it was pretty good authority for those conclusions.

Van Nest: The conclusions that marijuana was not demonstrably deleterious to one's health?

Orrick: Right.

Van Nest: What about the recommendations concerning police changes and findings concerning police brutality? Did you realize those would be so controversial?

Orrick: No, I don't think so.

Van Nest: What were the findings that were most criticized by the Mayor and the police?

Orrick: Well, I think you have named them. The legalization of marijuana and the criticism of the operation of the police department. The San Francisco Police Department has never, ever been willing to subject itself to an inspection by POST, which is a highly-regarded police officer association -- kind of gives the Good Housekeeping Seal of Approval to the work. They are skilled, able police officers and very experienced. You can have them go into your city, and they will write you a confidential report. They ride with the officers and so on. And the City has never been willing to do that, right up to this day.

VI. UNITED STATES DISTRICT JUDGE

A. Appointment to the Bench

Van Nest: Judge Orrick, how did you first learn there was some interest in making you a federal judge?

Orrick: Actually, I had lunch one day with Charlie Renfrew, and he asked me if I was interested in it.

Van Nest: Who is Charlie Renfrew?

Orrick: Charlie Renfrew, at that point, was a federal judge who had been on the bench about three years. He is now vice president, general counsel and a director of Chevron. This lunch was shortly after my Singapore experience. So I told him, yes, that I might very well be. He said, "I want to know for sure."

So, I called him the next day, after I talked with Marion and said yes, that I would like to be considered. At that time, both of the United States Senators from California, Cranston and Tunney, were Democrats. They had made an arrangement with the attorney general -- I believe it was Smith -- that they could nominate a Democrat for every three Republicans.

Van Nest: I take it the president was a Republican, President Nixon.

Orrick: Yes. John Tunney, who was then on the Senate Judiciary

Committee, was very much interested in the appointment of judges. Alan Cranston, the other senator, was not particularly interested. Tunney formed a committee consisting of Warren Christopher, Bill Coblentz and maybe one or two others.

Van Nest: At that time, Mr. Christopher was a prominent lawyer in Los Angeles, and Mr. Coblentz was a similarly prominent lawyer here in San Francisco?

Orrick: Yes. That committee had already recommended Bill Enright, who was then on the United States District Court for the Southern District; Matt Byrne, who was then on the United States District Court for the Central District; and Renfrew. Renfrew submitted my name to the committee. The committee thoroughly investigated my background, and thanks to them, Judge Renfrew, and others, I was lucky enough to be appointed.

Van Nest: Had you known Judge Renfrew in practice prior to that time?

Orrick: Yes. We were active in the Episcopal church at that time, and that is where we knew each other. Also, I knew him professionally.

Van Nest: Prior to that time, Judge, had you ever expressed interest in being on the federal bench?

Orrick: No, I hadn't. The only time I had ever considered being a judge was when Pat Brown was first elected governor. Within ten days after he had taken the oath, he had his special assistant, Fred Dutton, call me up and ask me if I wanted to serve on the Superior Court. I thanked him and told him I did not. So, I really hadn't thought about being a judge.

Van Nest: Were you immediately interested in the job when Judge Renfrew proposed it?

Orrick: Yes, I was. I love the law, and the law without clients is a particularly good way to live.

Van Nest: You mentioned that Senator Tunney was the one that set up this committee. Had you done any work for Senator Tunney?

Orrick: I had worked in Senator Tunney's campaigns, yes.

Van Nest: He had run, prior to that time, once or twice for the Senate?

Orrick: Once. It was on the second time that Hayakawa beat him.

Van Nest: What role had you played in the Tunney campaign?

Orrick: I helped him organize his Northern California campaign to some extent. I raised some money for him, not very much.

Van Nest: Do you know whether or not the Kennedys -- of course, by this point in time, it would have been just Ted -- had anything to do with your appointment as judge?

Orrick: Yes, Ted Kennedy did. When there were questions as to where I stood on certain matters, I told them to talk to Burke Marshall, who was then back in New Haven as a professor at Yale Law School, and also to Ted Kennedy. What bothered the committee was the thought that I was too conservative in my political views. I had to show them that I was in the middle of the road. And I did this through Burke recounting the wiretapping story and what we did back there in the Department, backed up by Ted.

Van Nest: You say "they." You are making reference to the committee?

Orrick: To the committee, yes, and to Tunney's staff.

Van Nest: Did you actually do an interview for the committee?

Orrick: No.

Van Nest: Were they, as far as you could tell, examining your political philosophy quite carefully?

Orrick: Yes. And my entire background.

Van Nest: Do you know who else they spoke with prior to approving you for nomination?

Orrick: John Frank and, I think, his wife, who was a staff person for Ted Kennedy. I didn't know them, but Mrs. Frank was particularly interested in my political stance.

Van Nest: What role, if any, did Mrs. Frank have in this process? Was she a member of staff to the Judiciary Committee?

Orrick: Yes. Staff for Ted Kennedy. I don't know how often they consulted her or what influence she had or anything else.

Van Nest: Was there any organized opposition here in San Francisco to your appointment as a judge?

Orrick: None, other than the Charles Houston organization, which opposed my nomination because I wasn't black.

Van Nest: In fact, did they portray you as a product of the old boy, downtown business club network?

Orrick: I don't really know. I only saw one article on it. It didn't make much of an impression on anybody, I am glad to say.

Van Nest: Was the fact of your membership in the Bohemian Club an all-male, exclusive organization -- the subject for controversy at the time of your appointment?

Orrick: Not at that time. At that time, I was a member of a number of exclusive clubs, including the Bohemian Club; the Pacific Union Club; and in Washington, the Metropolitan Club and Chevy Chase Club; and in New York, the Yale Club.

Van Nest: Were these all clubs that exclude women members?

Orrick: At that time, they all did, yes. When I took the bench, we experienced a drastic lessening in our cash flow, we cut out all the things that we could think of. The clubs were the first to go. I just stayed with the Bohemian Club and the Pacific Union Club.

Van Nest: Has your membership in those organizations caused any controversy in your years as a judge?

Orrick: No.

Van Nest: Did you appear for a confirmation hearing in the United States Senate?

Orrick: Yes, I did. I don't know if Jim Eastland was present. My recollection now is that there was only one senator there, and that was Senator Hruska. Senator Cranston accompanied me to the hearing room and, as is customary, said a lot of very nice things about me. And Senator Hruska was very polite and welcomed me to the judiciary. I don't think he asked any questions. The whole process took about fifteen minutes.

Van Nest: Can you tell us how it was that you were sworn in? There was some urgency, was there not?

Orrick: There was. I was up in the mountains on a vacation about the time that the Watergate scandal reached its peak and President Nixon was considering resigning. On the day upon which he left the White House, I was ready, with my wife and some others, to take a hike, which we had been looking forward to for quite a while. I was just pulling on my boots when my mother-in-law came down and said, "Bill, dear, did you know that President Nixon is going to leave the White House today?" And I said, "No, I didn't. But thank you very much for telling me."

Then I sat and thought about what might happen to my commission. I had already received the commission. I was just postponing the swearing in until it was convenient for me at the end of the summer. I had gotten the commission on July 9th, I remember. I thought the swearing-in ceremony was just a ministerial act and that no one could prevent me from serving.

So I thought about it. What could happen? And I thought of the famous case of Marbury v. Madison. You will recall that the Judicial Act of 1801 creating new courts had been passed by the Federalists. The Jefferson Republicans partly repudiated the Act upon coming into office. President Adams had named judges (they have been referred to as the "midnight judges" in the history books) to preside in the new courts, and he signed their commissions

before leaving office and sent them to his Secretary of State, John Marshall, to be countersigned and delivered. At about that time, Chief Justice Oliver Ellsworth took sick. One of the last things Adams did in his administration was to appoint his Secretary of State, John Marshall, as Chief Justice. Thomas Jefferson appointed James Madison as his Secretary of State. Of course, Jefferson needed to appoint his own party members to the new courts. In the meantime, Mr. Marbury, whom Adams had appointed as a part-time justice in a lower court, asked Madison to deliver the commission. Madison refused, and Marbury thereupon applied for a writ of mandamus to compel Madison to deliver his commission. Chief Justice Marshall ordered Madison to deliver the commission, holding that when the President signs a commission the appointment is complete.

I thought, "My case is nothing like that. I have gone through the whole process. I have my commission. It was signed by President Nixon and then Attorney General [William Bart] Saxbe. It is just an administrative act to swear me in." Then I thought I'd better check that. I did not know then that the commission became effective at the time the President signed it.

So, I called my best friend, Potter Stewart, who was an Associate Justice of the United States Supreme Court, at his summer home up in New Hampshire. I explained all this to him, and he said, "Well, I agree with you. It is a ministerial act." And I said, "Would you also agree that, if you were in my shoes, you would hightail it to San Francisco and get sworn in as soon as you could, before Nixon's resignation took effect?" And he said, "I would, by all means."

So, we hopped in the car. It was a three or three-and-a-half hour ride. I think that, technically, Nixon lost his authority at high noon when Ford was sworn in. Air Force One was then over Kansas or Nebraska. When we got down to The City, we picked up my dad and went down to the courthouse. The chief judge then, Oliver Carter, had us in chambers and swore me in. We had a formal swearing-in ceremony three or four weeks later on August 28th. That is when I first got on the payroll.

Van Nest: How many cases had you tried before becoming a judge?

Orrick: I really don't know.

Van Nest: You had not been in federal court trying cases on a regular basis?

Orrick: Oh, no. Definitely not.

B. Preparing to Preside

Van Nest: What did you do to prepare yourself to take on the job as a federal trial judge?

Orrick: I read every book I could get my hands on that had anything to do with judges' experiences.

Van Nest: Was there a regular training program for judges at that time?

Orrick: Yes. The Federal Judicial Center had a seminar for a week in Washington for newly appointed judges that was extremely helpful. The center brought in judges from all around the country to discuss different aspects of the work, such as civil trials and management of cases and things like that.

Van Nest: Did you seek personal advice from anyone, other judges or friends, prior to actually beginning your job as a judge?

Orrick: When I was back there -- I think it was that time -- I went in to see a good friend of mine, Gerry Gesell, who is the United States District Judge for the District of Columbia.

Van Nest: How did you know Judge Gesell?

Orrick: I knew him professionally, and I knew him when he was on Adlai Stevenson's staff writing speeches. His wife and my wife were good

friends. He was trying a murder case, as I recall. There were no ifs, ands, or buts with Judge Gesell. He runs a tight courtroom. That has always appealed to me, because decorum is so important in this very fragile institution of ours. I got a lot of help from him.

Van Nest: Were there any judges before whom you had practiced or tried cases, whom you tried to set up as examples for yourself in being a judge?

Orrick: No.

Van Nest: Why not?

Orrick: Every judge has his own style, and I never made a conscious effort to copy anybody else's style.

Van Nest: Judge Orrick, at the time you took the bench here in the Northern District in 1974, what kind of people were serving as judges here in the Northern District? Can you tell us who they were and a little about their backgrounds?

Orrick: Lloyd Burke was there. He and I had been at Boalt Hall at the same time. He had been an assistant district attorney in Alameda County. As he tells me, he and his family and the Knowland family were good friends. The senator had him appointed as United States Attorney and later on as United States District Judge.

And then Al Wollenberg was on the court at that time, who was a fine man and a fine judge. He had a great mind, great memory. He had been on the superior court bench in San Francisco for many years and was well-respected by the entire legal community.

George Harris had been a long-time acquaintance and a friend. We grew a lot closer together, of course, when we were on the court.

Van Nest: Had Judge Harris been a superior court judge prior to that time?

Orrick: He had been a municipal court judge. He went from there to the

federal bench right after the Truman campaign.

There's also Al Zirpoli. Al had tried many, many cases in the federal court, both on the defense side and as an Assistant United States Attorney. He had been a member of the board of supervisors and was and is a superb trial judge in all respects.

Van Nest: Was Judge [Robert] Peckham sitting at the time you took the bench?

Orrick: Yes.

Van Nest: What was his background?

Orrick: He had been an Assistant United States Attorney. Then Pat Brown appointed him Superior Court judge in Santa Clara County. Then he came to the court in about 1966. He is a superb Chief Judge and has a national reputation as such. The other judges sitting at the time that I came to the Court besides Chief Judge Carter included Judges Weigel, Sweigert, Schnacke, Conti, Williams, and Renfrew. They were and are all good judges and, of equal importance to me as a sitting judge, were and are friendly and interested, and we became and are good friends.

Van Nest: Were there any women sitting on the Northern District bench at that time, or minorities?

Orrick: No, none.

Van Nest: Most of the judges you have described for us either had criminal law backgrounds or were business lawyers in their practices.

Orrick: Yes, that is true. When I first started practicing law, which was right after the War, the big emphasis was in securities work and corporate work. And there was not much prestige attached to being a trial judge, even a federal trial judge. That, of course, changed drastically within ten years, where both are very, very important today. Top litigators, as well as the top business lawyers.

C. Caseload in the Northern District

Van Nest: Can you give us some idea, Judge Orrick, of the kinds of cases that you handled early on in your career as a judge, and then as you continued to preside these thirteen years?

Orrick: Well, our docket is about ten percent criminal cases, and the rest of them are civil cases from every possible branch of the law that there is. In this highly diversified practice, we became of necessity generalists, or generalists' generalists. And the specialties that one might have had in the private practice came into play only very occasionally. So, you are always learning something in another part of the law. When I first went on, we had a number of antitrust cases. Those petered out when the Republicans -- particularly the Reagan Administration -- stopped enforcing the antitrust laws.

Van Nest: When was that?

Orrick: It was with Reagan, in 1981.

We have also had a steady stream of petitions for habeas corpus because one of California's biggest prisons, San Quentin, is in our district.

We also get an endless stream of what we call SSI cases, Supplementary Social Insurance cases. These usually arise when the plaintiff, who has made a complaint to the secretary of Health and Human Services that he or she is totally disabled and can't handle any job, then tries to get this extra social security money. And, if he or she is turned down, they inevitably come to our court.

I think this is one of the worst examples of the waste of time and energy of judicial officers. It's a situation where the plaintiff, under this program, gets six bites at the apple instead of the normal two or three. The plaintiff goes first to the office of the Secretary. A person there listens to the complaint. The plaintiff fills out a form, and then that person looks at it and says, "We can't do

anything for you, but you can appear before an administrative law judge."

Then, if the applicant lives, say, in Santa Rosa, an administrative law judge comes all the way out from Washington, or maybe from a regional group, and goes up to Santa Rosa. Then the plaintiff can appear before him or her, with or without an attorney, and bring doctors, medical reports, and other evidence. The administrative law judge is then required to make findings of fact and to create a record, including all the medical information, as exhibits. If the administrative law judge decides against the plaintiff, he tells the plaintiff that he or she can go to the Appeals Council in Health and Human Services. The Appeals Council then reviews the record that has been made, usually sides with the administrative law judge, and denies the plaintiff the benefits of increased income.

At that point, the plaintiff can come to the United States District Court and ask the court to review the record to see if there's substantial evidence to back up the findings made by the administrative law judge. I almost always look at the findings of fact and conclude, "There's substantial evidence to back the opinion of the administrative law judge. The applicant then has the right to appeal."

Then the plaintiff, on the fifth bite, goes to the United States Court of Appeals, and they review the decision of the district judge. If they affirm, the plaintiff can still, to my surprise, petition the Supreme Court of the United States for a writ of certiorari. This six-bite procedure is really outrageous.

Van Nest: It's a lot of time and money?

Orrick: Absolutely. A big waste.

Another twenty percent of our cases are diversity cases. Diversity jurisdiction may have been important in the late 18th century and even into the middle of the 19th century, when travel was so slow. It was likely that, if you lived in Boston and sued a person in New York, as the vernacular has it, the New Yorker might

"home-town" you, that is to say get a big advantage by the fact that he was trying the case in his own home town, and play on the jury's sympathy for someone in that home town.

But those days have long since passed. Today, when you can cross the country in just a very few hours, there's no sense at all, so far as federal judges go, to maintaining this diversity jurisdiction. But the lawyers insist on it. It's a perennial source of argument between the Bench and the Bar, because they can get to trial more quickly in the federal court and because a lot of them think, rightly or not, that the caliber of the judges is better in the federal court than in the state court. So, in every Congress a bill is introduced to divest the court of its diversity jurisdiction, but it never passes.

Van Nest: And I take it you would vote for it.

Orrick: I would, certainly. And, indeed, many of my longest cases have been diversity cases.

Van Nest: What sort of criminal matters have you been hearing as a federal judge sitting in the '80's?

Orrick: Primarily drug cases. Drug cases and bank robberies and embezzlements, done mostly by people who had a drug habit and needed to buy drugs.

Van Nest: Do you have any idea what percentage of your criminal work load either involves drugs as an offense or involves drug users as the defendants?

Orrick: I don't. It seems a great, great many.

Van Nest: Has there been much emphasis on white collar crime during the fourteen years that you have been on the bench?

Orrick: Yes. It's increased a good deal. We have had more tax fraud cases, for example. And we have had embezzlement cases and securities fraud cases, lots of those. Those are all white collar crimes.

Van Nest: One of the most important tasks of the federal court is to enforce

the civil rights laws of our country. What kinds of civil rights cases have occupied your time as a judge?

Orrick: When I first came to the court, we had a number of fair housing cases. Those cases were won almost every time by the plaintiff, and before white jurors. It never has made a difference as to whether there were blacks on the jury in that type of case.

Van Nest: You say most of those cases were victories for plaintiffs?

Orrick: Yes. And wrongful termination cases are our most prolific source of so-called civil rights cases these days.

Van Nest: What sort of circumstances do those involve, or what sort of patterns?

Orrick: A failure to promote, failure to employ, failure to assign persons to a different type of job, even though it was the same pay. That sort of thing. The big companies in the United States, counselled as they are by the best lawyers in the United States, have discovered that it's not desirable profit-wise to keep running into these wrongful termination cases or wrongful employment cases.

Another thing that bothers me about such cases is the role of the judge forever as the last word in a particular industry. The judge becomes a personnel manager. Just to give an example, there are some 58,000 cannery workers in the state for whom I am the court of last resource. There are numerous military aircraft of all kinds which, under a decree, I can order back to their base because they are polluting the environment. There are a dozen other similar types of cases. That has never been my idea of what a judge should do. What he is doing there is administering laws. And that is not his function.

1. Sentencing Patty Hearst

Van Nest: You have handled some of the most celebrated criminal cases in our district during the last thirteen years, the best known being the

Patty Hearst case. Tell us about the background of that case.

Orrick: Well, Patty Hearst, as almost everyone knows, was kidnaped from her apartment in Berkeley while she was attending the University of California. Her kidnappers were a man and a woman, Bill and Emily Harris, and a black man named Cinque. The case was handled badly by everybody, and certainly at the beginning. Emily Harris, had a big bank account at a bank in Berkeley, which the FBI staked out for two days and then quit. On the third day, Emily Harris came in and drew out her money, and the FBI never did find her again for about three years, I think. Her captors drove Patty Hearst all over the United States and went to retreats where they talked about revolution in America and what they were going to do to bring it about. It was nothing more nor less than one of these crazy cults, which we still have in our country.

Van Nest: And if I recall correctly, the name of the group was the Symbionese Liberation Army.

Orrick: That is correct. Finally, the San Francisco police, acting on a tip, picked her up in San Francisco with her Japanese companion, and she was tried for robbing the Hibernia Bank in which a gun was used and fired. She is in a famous picture holding a tommy gun right outside the bank.

Her parents tried to get the best lawyer they could for her. They got good advice and didn't take it. They could have hired James Martin McInnis at that time. He was the very best criminal trial lawyer in the city. Everyone had a high regard for him, including the judges. He most certainly would have been able to work out a satisfactory plea bargain with Chief Judge Carter, who drew the case and who ultimately tried it.

Instead, they picked F. Lee Bailey, who had a national reputation built largely upon newsworthy clients. He had an assistant, Mr. Johnson, who was a good lawyer. Together, they defended her. Judge Carter wouldn't hear a motion in limine to prohibit questioning her about what she had done on this long trip.

Van Nest: What was her defense at trial?

Orrick: Her defense was that she was "brainwashed" by these people. However, she had had ample opportunity to escape but failed to do it. She even fired a gun into a sporting goods store in Los Angeles from which the Harrises were emerging with some stolen property.

The case went on for at least three months. The ceremonial courtroom was filled to overflowing every single day of the trial, not just with sightseers, but with press from all over the world. At the conclusion of the trial, the jury found her guilty, and Judge Carter, under a provision of the Criminal Code, sent her to San Diego for an evaluation which would assist him in imposing the proper sentence. Almost the day after that trial, he started a difficult antitrust case. After a week of that, he died of a heart attack.

The next job for our court was to determine who would finish the Hearst case. So, we all gathered in the robing room and had the clerk bring down the box. We each were satisfied that he had mixed up the ballots. The first ballot that he pulled out had my name on it, and that was the Hearst case. He reached in again and pulled the second ballot, and that ballot -- it was another case -- but that was my case. The third time, he pulled out a ballot that was George Harris' case, and the fourth time he pulled out a ballot that was my case. So, I got three out of his four then-pending criminal cases.

Van Nest: You hadn't sat in on the trial, and you were being called upon to sentence Patty Hearst in this very important and highly publicized case. How did you go about preparing to do that?

Orrick: The first thing I did was keep her down in San Diego for another six months to see if I could get some help from them. They had said that she had some psychiatric problems. So, I considered that the proper thing to do. I had accepted an assignment to sit out in Guam, and I took my law clerk with me and a hundred pounds of paper, being the transcript in that case. During the day, I held court in the courthouse in Guam. In the evening, night after night after night, I read that transcript. There's nothing more boring than reading a transcript.

Van Nest: What impression did you come away with after reading the transcript?

Orrick: That these kidnappers were psychiatrically -- well, were to the point of being insane -- and that she had possibly been brainwashed, because it is true that she didn't take the chances that she had to escape. But that is just speculation on my part. I wasn't the judge or a member of the jury. And the jury found her guilty of bank robbery and using a weapon in a robbery in which shots had been fired and people injured. So, that was the subject matter that I had to deal with.

I then got advice from whomever I could. `I managed to get views from most of my colleagues. I also wrote to Norman Carlson, who was the Director of the Bureau of Prisons, and asked for his recommendation. The recommendations, as you can imagine, went everywhere from time served, pardon, twenty-five years, all over the lot.

Van Nest: Were there really other judges and people advising that Patty Hearst should get a twenty- or twenty-five-year sentence?

Orrick: Yes.

Van Nest: And?

Orrick: Norm Carlson of the Bureau of Prisons, whom I had asked for a recommendation, recommended nine years. I thought a lot about that and talked it over with one or two of my colleagues for whose judgment I had great respect and who were very good friends. They thought that was about right. So, I kept worrying about it, and finally, on the day on which I had to sentence her, I decided seven years would be about right.

Van Nest: What were the issues that troubled you most as you tried to determine what a fair sentence would be for her?

Orrick: Well, it wasn't clear that she had actually pulled the trigger on the gun. But she did have the gun in firing position during the robbery, and there was one bullet missing from the chamber. Others thought that somebody else used the gun that ricocheted off

the wall and wounded a pedestrian.

Van Nest: What about her standing in the community? She was a young woman from a wealthy family, had all the advantages that wealth can provide, had a fine upbringing, went to private schools and to the University of California. Did her family or her standing in the community pose a troubling issue for you?

Orrick: No, it frankly didn't. Of course, I had all the information about her at the various schools. Her records were poor. I was punishing her, as I would any other person, male or female, who was convicted of armed robbery and in which a gun was fired. Society requires that people like that get sentences that they will remember.

The upshot of it all, as is obvious, was that it was a no-win situation. And for days and weeks and months, I got letters, not from local people so much, but from people all over the world, people in little towns in Louisiana. I got a weekly death threat from a fellow in New Jersey. I got a number of death threats. I just turned those over to the FBI. I got letters from Belgium, from Australia, from Tonga, the Midwest, but very few from California.

Van Nest: What was the public reaction to the seven-year prison term?

Orrick: Just what you would think. Both: "The only reason that she got seven years and wasn't treated like other criminals was because she had a wealthy family." Or: "What right have you to sentence a daughter of the great benefactors of California, the Hearst family?" That kind of thing.

Van Nest: The whole gamut?

Orrick: The whole gamut. A few said, "Well, you did just the right thing." But it didn't bother me. The job was done, and she was out on bail. I let her out on one million dollars bail. She had her appeal through the Court of Appeals and then the Supreme Court.

Van Nest: What happened legally after the appeals were over?

Orrick: After the appeals, I intended to send her to jail, and probably over

at Pleasanton, which I eventually did. The mandate had not come down from the Court of Appeals, but I knew the day that they had sent it. At that time, I had the United States Attorney and the marshal come to my chambers. I was about to leave on a trip to Europe, and I wasn't going to change my plans. I ordered them to say nothing to the press or anyone else about when they were to take her to Pleasanton. They were to avoid the publicity in every way possible. "Take her there at 2:00 in the morning, or whatever. And don't tell anybody."

And, regretfully, that didn't work because Billy Hunter, who was then the United States attorney, blurted out to a newspaper reporter, who had called him on the phone, that he was going to take her at such and such a time. It wasn't a serious matter at all. Billy apologized to me when I got back. Everybody does it. I had no feeling there, except for her safety.

Van Nest: The Hearst family hired a lawyer to challenge Bailey's conduct at the trial?

Orrick: Yes.

Van Nest: That matter was brought before you a year or two later.

Orrick: Yes. My plan had been for her to serve part of her sentence up to about October. The impression that I did want the public to have was not that just because she had rich parents and could appeal to the Court of Appeals and to the Supreme Court, that she would then be free on time served. So, I wanted to show people that isn't the way we worked. I treated her like I treat everyone else.

Van Nest: How much time did you intend to have her serve?

Orrick: Six months. From May to October. So, when I got back, Bailey and Johnson came to see me and asked me if I would let her out. I said no, and she thereupon fired her lawyers. She got another lawyer, Mr. George Martinez. Mr. Martinez came to my chambers, and I told him he could look at the record and, if he had any questions, I would be glad to answer them.

Van Nest: Did you tell Martinez that you intended to let his client out within the next few months?

Orrick: I told him in a general way that I intended to keep her in until the fall. I said, "If you want to be a hero on international television, all you have to do is file a petition for a writ of habeas corpus. But I don't know what ground it would be on, unless you thought that these two well-known lawyers were not competent counsel."

Mr. Martinez said, "You said it. I didn't."

I said, "I thought her lawyers were entirely competent, just to be clear with you. If you want to file any papers, lodge them with me first. I will tell you what I am going to do with them. But, if you want to get on television, just file them up in the clerk's office."

So, a month went by, and he filed a petition for habeas corpus, complete with exhibits in boxes three feet high, and the exhibits -- I couldn't believe it. The exhibits were newspaper clippings from all over the world. He had them all. Magazine articles and newspaper clippings. His petition charged all kinds of things, so I couldn't let her out then without dealing with her petition, and that took a long time.

Van Nest: One of the claims in the Martinez petition was that it was incompetent of Bailey to put his client on the stand, knowing that she would be required to assert the Fifth Amendment in response to questions. In fact, she asserted it some forty-two times in the course of the trial.

Orrick: That's right.

Van Nest: Were you troubled by the conduct of the trial by Mr. Bailey?

Orrick: It's hard to criticize another lawyer's tactics in the trial. Bailey had tried to get a ruling in limine prohibiting questions concerning every part of her captivity. Judge Carter declined to rule on it before trial, so Bailey was taking a chance, because he did not wish his client to rely upon her Fifth Amendment right of not

testifying before the jury. The fact of the matter is that his client asserted her Fifth Amendment rights forty-two times. So, when the jury retired to deliberate, they were deliberating the fate of a person who forty-two times had taken the Fifth. And there is no doubt that that made a big difference to the jury.

Van Nest: Did Mr. Bailey appear before you to defend his conduct of the trial?

Orrick: No.

Van Nest: What finally happened?

Orrick: The next thing that happened was we filed our opinion on the habeas corpus matter. What followed was a "grass roots" demand all over the country for her release. An Episcopalian priest organized this letter-writing campaign to President [Jimmy] Carter. The following February, the pardon attorney in the Department of Justice got in touch with me and asked if I had any problems about having the President grant Ms. Hearst executive clemency, and I said, "No, not at all."

He said, "Well, do you want to give me your idea of what should be said?" And I said, "No. That is up to you and the President. The only thing that Martinez did for her was to force me to keep her in jail four more months, and so maybe she ought to be given executive clemency."

The mail came in floods to the White House to pardon her. She wasn't pardoned. She received executive clemency, is what the technical name is. No sooner had President Carter given her executive clemency than the very next day hoards of mail and telephone calls overwhelmed the White House, charging the President with playing favorites and letting the daughter of a newspaper publisher out of jail when, if she had been an ordinary bank robber, he wouldn't have thought of it. So much for the view of the public.

2. Trying the Hell's Angels

Van Nest: You also presided over another celebrated criminal trial here in San Francisco involving the Hell's Angels. What can you tell us about the background of that case?

Orrick: That case had already been tried by Judge Conti. The charge against the Hell's Angels, and twenty-five of them were in custody, was that they were manufacturing methamphetamine with the intent to possess it and distribute it. The case had been building for more than three or four years by various law enforcement agencies in and around San Francisco. When the FBI and all the interested parties swooped in one evening on each one of these people, it caused a big stir in the community.

I remember Judge Conti telling me that he was just returning from Hawaii and was met at the airport by the U.S. Attorney and United States marshals who explained all this to him, and he decided that with these defendants, who had such miserable reputations and who thought nothing of using violence to accomplish the slightest end, that he would require a specially built courtroom. He had Judge Burke's courtroom -- Judge Burke was sick at the time -- remodeled. He had bulletproof glass, I think, in front of the bench. I know he had it at the end of the courtroom. He had the desks bolted to the floor, as well as the chairs.

There was a very bad relationship, and perfectly natural, between counsel for the Hell's Angels and government counsel and the court. The defendants got some of the best criminal lawyers that there were. They paid enormous amounts of money to them.

Van Nest: The first trial ended in a mistrial?

Orrick: Yes. The first trial ended in a mistrial. Then it came time for the second trial, which I drew. I decided that I would not use the special courtroom, but that I would conduct the case in my own courtroom.

Van Nest: Why did you decide to do it that way?

Orrick: Well, because I found it very depressing being in that courtroom. It was dark, and it was as though everybody in the room was in custody, and I didn't want any part of it. So, I had it in my own courtroom. I had a metal detector at the entrance to the courtroom, in addition to the metal detector down on the first floor. I want to emphasize that my case was very different from Judge Conti's case, the main reason being that the defendants had gotten a deadlocked jury in the first trial. The Hell's Angels and their lawyers thought that they would get the same again and maybe even be acquitted, if they behaved themselves. Or they must have come to that conclusion.

Van Nest: So, you think you had an easier time of it than Judge Conti experienced the first time around?

Orrick: Yes, I did. And I thought that that was the reason. And, also, I had the United States Attorney, Billy Hunter, cut the number of defendants down to twelve, and that was bad enough. Judge Conti, I think, had about eighteen all together. So, in my courtroom, we had benches in a rectangular mode with a defendant, and then a lawyer, and then a defendant, and then a lawyer. So, it went right around the room.

I told the Hell's Angels' lawyers that I wouldn't be having any conferences in my chambers, and they said, "Well, we appreciate that very much, judge." And one of them said, "My defendant is very suspicious, and he wouldn't believe what I told him went on." And I said, "Well, that's all right. It's all going on the record."

Van Nest: What were some of the special problems in trying the cases? You had some colorful witnesses, no doubt.

Orrick: That's right. The main problem was the witnesses. As the government is fond of saying, "We don't have Boy Scouts as witnesses in criminal trials," and particularly not in this type of a trial.

Van Nest: What sort of people testified on behalf of the government in the

case?

Orrick: With the sole exception of a couple of agents, they were nothing more nor less than thugs, who were either in the government witness program, or who had been given immunity from prosecution for another crime. One had even been given immunity from prosecution for murder. I thought that was outrageous. But the government all over the country was anxious to put an end to these motorcycle gangs. There were cases similar to this one in Omaha and in Baltimore, just two that I happen to know about.

Van Nest: Can you give us the flavor of some of the testimony of some of these witnesses?

Orrick: Many of the witnesses had been members of the Hell's Angels. When they took the stand, you could just feel the hate between the defendants and the witness on the stand. It permeated the courtroom. We had a number of marshals in the room, but they were in civilian clothes. They rotate around the country. I never knew who was a marshal and who wasn't. In addition to that, the other Hell's Angels who hadn't been tried or were not part of this prosecution, at least, took turns coming to the courtroom.

So, daily, we had at least a dozen of these smelly, rowdy hulks in the courtroom staring at the witness. Even with the metal detector there, the marshals told me they picked up big belt buckles and tire chains and all that before they even came into my courtroom. They could best be described as Tony Serra described them in his opening to the jury. Serra is a skilled cross-examiner and an excellent lawyer, in my opinion. When he got up, in the course of his opening statement to the jury, he said, "Ladies and gentlemen of the jury, you will find these witnesses are nothing but scumbuckets!"

Van Nest: Shouting?

Orrick: Shouting. And I admonished him for that. But for the entire balance of that trial, I looked at the witness and wondered whether the marshal was close enough to pull him back, I thought, "Well, Serra was right. That is a scumbucket," witness after witness after

witness.

Van Nest: Give us the flavor of some of the testimony of some of these people.

Orrick: These people, as you can well appreciate, were very easy to cross-examine. They all had rap sheets six feet long. The opening question would be, "Now, will you tell us why, on the night of January 16th, 1974, you killed one Jefferson Oboe?"

"Well, yes. A bunch of us were standing at the bar, with our chicks. And this Oboe, he's big, too, and he's black. And I just didn't think very much of him. He says something about my chick, and I had a knife in my boot, and I pulled it open, and I gave it to him like that and didn't hit a rib. It went right into his heart, and the guy just keeled over."

"Well, then, I understand you only spent five years in custody; is that correct?"

"Yes. That's correct."

"What happened when you got out?"

"Well, the night I got out, I looked up some of the boys. We went down and had a few beers. The bar was crowded, and they didn't get the idea that I wanted a drink. So, I came in, and I spread them with my elbows, and some guy takes a poke at me. Well, the first thing I done when I got out of prison was to pick up my gun. I just picked it up -- his head was right there, and I shot it right in his ear."

That is an exaggeration, but not much of one.

Van Nest: During the middle of the trial, were you surprised and disturbed to learn that one of the government's chief witnesses had earned a hefty sum for his services?

Orrick: I was just coming to that, yes. The government, on direct examination of a fresh witness, said, "Now, Mr. So-and-So, the

government has paid you for your testimony, has it not?"

He says, "Yes."

"How much did the government pay you?"

The guy said, "$50,000." I forget. Maybe $35,000. At that, I ordered the jury back to the jury room, and I said to the prosecutor, "Do I understand from you that the United States government has paid this man $35,000 for what he is about to say?"

"Yes, your honor."

I turned to the witness and said, "Did you get that money?"

And he said, "Yes."

I said, "When did you get it?"

"Oh, about two or three weeks before the first trial."

"Well, how did you get it?"

He said, "It was no big deal. I was down in a cabin we had in the Santa Cruz mountains. About 2:00 in the morning, that fellow sitting over there next to the attorney comes to my cabin, and he says, 'I want you to testify as to what these fellows were doing most of the time in connection with manufacturing methamphetamine.'

"And I said I would do that, but for a price.

"And he said, 'How much?'

"And I said, '$35,000.'

"So then, he opens his suitcase, and there it is in bills, ten's and twenty's, and so on."

Van Nest: Were you shocked?

Orrick: I was shocked to pieces. I thereupon declared a recess to go in and think about what I should do. The government had spent well over a million dollars preparing this case, and I was not up on the procedures or the uses made of the Drug Enforcement Agency, or the current thought on it, either. So I called up a judge in Philadelphia who had had one of these cases and asked him what he did about it. He said, "Well, the case had been lost anyway, but I just declared a mistrial."

Van Nest: Based on the payment to an informant?

Orrick: Yes. So, I weighed that against the trial and the effort that had been put into it, and I thought, if we got a verdict, I would let the Court of Appeals do that. So, I went on with the trial.

Van Nest: What was the result?

Orrick: A hung jury, again. I talked to a couple of the jurors. The people who voted against them said, "What we didn't understand was why the government would give these people immunity for murder and give this kind of testimony. Why didn't they prosecute the murderers?" That is a very good question. That is the question I asked. They got these gangs, and they were bribing witnesses. They thought $35,000 was nothing.

Van Nest: Was the case retried a third time?

Orrick: No. Let me mention one more thing about the Hell's Angels case. Going into that courtroom, which was packed with people, where fifty-nine people had to be in place before I came into the courtroom, four times a day, was a great strain, to put it mildly. And it was a strain to be taking your notes, watching that witness, keeping an eye on everything going on down in front of you and at the back, and trying to see who that big fellow was who just came in the door. It was a great strain.

During one afternoon recess, the marshal came in and asked me if I would give him ten or fifteen minutes more, and I said, "Oh

sure, absolutely." So, when I came in, we went on with the trial, and I happened to look over to my far right, and the fellow sitting there had a big bandage over his head.

Van Nest: One of the defendants?

Orrick: One of the defendants. So, when we recessed for the afternoon, I asked the marshal, "What happened to that fellow?"

"Well," he said, "that fellow was making faces at you and giving you the finger and so on. When we took the afternoon recess, the defendants formed a half circle in front of the holding cell, and four or five of them took this fellow into the holding cell. The other Hell's Angels kept the marshals outside, and they just took this guy and really beat him up. They slammed his head against the bars." He was really in tough shape.

I said, "Why did they do that?"

He said, "Well, you can see they are not being obstreperous. They are trying to play it right."

The leader, Walton, I think his name was, was fed up with this fellow's conduct because he wasn't following the rules. And I must say that I looked over there a lot after this incident, and he was as good as he could be. He couldn't have been any better.

Van Nest: He was an angel, not a Hell's Angel?

Orrick: That's right.

3. Desegregating San Francisco's Schools

Van Nest: You have also presided over some very important civil rights cases in San Francisco, one of which was a challenge by the NAACP to

the racial segregation of the San Francisco schools. Was that a tough case for you?

Orrick: Yes. That was a difficult case. I hadn't been involved in any of the school desegregation cases, and the counsel that I had in this case were skilled at it. In fact, they spent their entire time going around the country prosecuting and defending these cases. So, rather than take a strong activist position, I thought I would let them dispose of the case in the manner that seemed fair to them and on which I was sure that they could reach some kind of an agreement. They would come to status conferences every three months, and we would discuss what was going on.

Finally, after the case had gone for a while, I said, "I want this case settled. I told you that the first day you came in. You are so busy going around the country, you don't have time to think about this case. So, what I am going to do is, you give me three days, I get your undivided attention for those three days, and you will have mine. I won't be trying any cases. And we will see if we can't settle it."

When they came for the three days, they came to the courtroom every morning at 9:00. I would lock them in the courtroom until noon, and I would say, "If you want anything from me, just come get me in my chambers," and I would excuse them for lunch, and then they would come back. At the end of two days, it was apparent to me that we weren't going to get any place. So, I went in to see them and said, "You are not getting any place. In 1963 I settled a big case for the government, the I.G. Farben case, and I am going to use some of the same methods on you that I did on them. What I am going to do is, first, I am going to set the case for trial. I am going to do that right now. The case is going to trial on February 8th." This was in May or something like that.

"So, I want you to have one team to get ready to litigate this and get another team working on the settlement. If we don't have a settlement by February 8, we will be all set and ready to go to trial. If you don't like that idea, and I must say that I don't know how great it is, you can go out and give me another. I will give

you two hours for lunch. If you don't come back with a better idea, we take my idea."

My law clerk was in the courtroom, and when we went back into chambers, he said, "Judge, that was sheer brilliance."

I said, "What do you mean?"

"Well," he said, "your plan is so bad and so stupid that there's no possible way that they are going to come back without a good program." To make a long story short, they didn't have a program, and I put my program into effect.

I said, "The next thing I am going to do is to get the best professional people in the country to work on this case. I am going to employ them as the court's experts, and the chairman will be the former Commissioner of Education, Professor Howe of Harvard. I will start in with him." Howe is one of the best known educators in the country. He told me that he was trying to retire, and he couldn't possibly do it. Well, I worked on him, and finally he said, "I will do it, if you get Gary Orfield."

I said, "Who is he, and what is his phone number?" Gary Orfield is a professor at the University of Chicago who is a specialist in this desegregation work and who testifies all over the country and has written a lot on it. I got him, and he agreed to be the co-chairman. I then told each party, the parties being the NAACP, the San Francisco School District and the State of California, that they could each appoint one expert to this committee. And I advised them to get one with as high credentials as mine, and that they could talk to their expert, but they could not talk to any other member of the committee, nor could they attend any meeting of the committee.

So, they did get first-rate people. One gentleman was a Quaker from the University of Miami, who specialized in this field. Another was Dean of the School of Education at the University of Michigan, or Michigan State. I have forgotten. And the other experts were very good.

I called these the "Committee of Wise Men." They met around the country, as these types of committees do, in New York and Boston and O'Hare [Airport] and San Francisco. Finally, they came up with a superb report, which I handed to counsel. I asked them to read it and then come back and we would talk about it. So, they came back and they said, "Judge, this is an excellent report."

I said, "Well, that is very high praise from you, Mr. Atkins."

And he said, "I agree with it, in principle, absolutely."

Then Mr. McCutchen, who was the other attorney from Detroit --

Van Nest: He represented the school board?

Orrick: Yes. He said, "I agree with Tom, Your Honor. It's an excellent report, and I agree, in principle."

I said, "Gentlemen, I haven't been away from the practice of the law long enough to make me forget that when I wanted to say no politely, I would always say, 'I agree, in principle.' So, let's begin with the first sentence." I read it, and I said, "Does anybody object to that?"

"No, sir."

I said, "All right," and I went on and read the second sentence. "Any objections?"

"No, sir."

So, that is the way I went for one or two paragraphs, at which point they said, "Judge, we can't do this this way. We have got to get hold of this and edit it."

I said, "No, no. You guys are experts, and you are flying around the country and everything. But your paperwork in this case has been very poor. I am going to get an amanuensis."

They looked at each other and said, "Exactly what is that?"

I said, "Somebody who writes for you."

They said, "Who?"

I said, "Lloyd Cutler."

They said, "You know Lloyd Cutler?"

I said, "Yes. He is a very good friend of mine."

Van Nest: Who is Lloyd Cutler?

Orrick: He is perhaps the best lawyer in the United States. He went to Yale, clerked for Judge Learned Hand, started his own firm in Washington, was counsel to President Carter, and has been in countless national and international ventures, including getting the hostages back from Iran. It was all his plan.

So, I called him. Lloyd loves this kind of business. The next morning, two young partners from the Cutler firm were in my office. I told Atkins and McCutchen, "You two better stay here for the weekend."

I put them in the jury room, and I said, "You tell these fellows where you disagree."

Van Nest: Had the experts proposed a settlement plan or a consent decree for the schools?

Orrick: Yes. And they had outlined what should be done.

Van Nest: Was it pretty clear, from the evidence that the parties had developed, that the schools had in fact been segregated for a long time?

Orrick: Oh, yes. San Francisco schools have been segregated since 1850. All you have to do in one of these desegregation cases is to find that just a part of the school district is segregated. Of course, it's

easy enough to find in Hunter's Point. Then the judge has the power to rearrange the entire school district. So, that was no problem for the committee. They looked primarily at how it should be done.

Van Nest: And the task for Cutler was to take the committee's report and turn it into some sort of working document?

Orrick: That was the idea. Turn it into what became the consent decree. So, they started in and worked in Washington firing out drafts to McCutchen in Detroit and Atkins in New York and the state lawyer up in Sacramento and to me. It became necessary to get it done in a hurry because of the election. I wanted it in place when the new administration, and Governor [George] Deukmejian, came into power. So, everybody cooperated fully. The Cutler firm had counsel come to Washington. They worked day and night for two or three days. Finally, we got down to the zero hour. The next day, the counsel were to come across the country and talk to me about the consent decree. Well, one of the Cutler lawyers called and said, "Judge, we are sorry. They left here at 4:00 this morning, mad. They couldn't agree on anything."

I said, "Did they tell you what they disagreed on?"

And he said, "Yes."

I said, "Was it important, or not?"

He said, "No. It's really of very little importance. Do you still want to see them?"

I said, "Definitely." So, when the lawyers walked into my chambers two days later, I thanked them effusively.

Van Nest: I take it they were ready for a lashing.

Orrick: That is what they thought. I thanked them ever so much for all the trouble that they had gone to and their help to me. I then said, "I have had to move up the trial of the case until next Monday."

They said, "Next Monday?"

And I said, "Yes. I am bringing out the co-chairmen of the Wise Men, Professor Howe and Professor Orfield. They will testify Monday morning as to whether or not San Francisco is a segregated school district. They will have two hours, and you will have two hours. Then, in the afternoon, we are going to deal with the remedy."

And they scowled, and I said, "Well, it's yours. You did it. I thank you for it." I held up the consent decree and struck out the word "consent," and I said, "I am really delighted that we did have this agreement because I have always been interested in education. I have been on a state education commission, and a trustee of a number of schools: the Thacher school, Katherine Burke school, the San Rafael Military Academy and others. And I have got some ideas of my own about education in general. I was just going over them when you came in. If you don't like them, then you take it across the street to the Court of Appeals."

So, I opened the decree, and they said, "Judge, could we have about five minutes?" I said, "Sure." They went outside, and in about two minutes they came back and said, "We agree with the decree just exactly the way it is. We don't need Your Honor's help on anything."

I said, "That's too bad. But, as long as we have got it, we are going to have a little signing ceremony." So, we got the superintendent over, Superintendent Alioto, and they all signed, and I signed.

Van Nest: Did the plan call for busing in San Francisco?

Orrick: Yes. Some busing. And busing was already going on. We bused some ten thousand kids a day at that time.

Van Nest: What were the other principal features of the consent decree?

Orrick: Well, the goal was to change the ethnic composition in the schools, so that students from different races were spread throughout the

district.

There was a question of making these what they call magnet schools, putting in special types of computers and things to arouse the interest of kids in other school districts, and busing them in. The ethnic distribution was that there would be no more than forty percent of any ethnic group in any one school.

Van Nest: Forty-five, I believe.

Orrick: Well, it was to go down to forty.

Van Nest: I see.

Orrick: And it was forty just recently.

Van Nest: When was the decree to go into effect?

Orrick: July of '86. And the decree worked very well.

Van Nest: Has it been a success?

Orrick: Yes. It's been a great success.

Van Nest: Why?

Orrick: Because the ethnic composition in the schools has been changed. The magnet schools have attracted others. The proof of the pudding is in the scores. And the scores, even from the school with the lowest in the city, have improved. So, in my view, and from the periodic reports that I get from the school district, it's been a definite success.

Van Nest: Have you had to be the kind of hands-on administrator that judges have become in other cities, such as Judge Garrity in Boston and some of the other desegregation cases?

Orrick: No. I have not, and I resolved at the outset I would not do that. I don't think that is a proper part of the duties of a federal judge, and I have eschewed that to the extent that I can. I have,

however, appointed Professor Orfield to monitor the school district to be sure it is following the dictates of the decree.

4. The San Francisco County Jail Case

Van Nest: Another civil rights case that has received attention here in San Francisco is one which involves the San Francisco County Jail. What do you recall as the big issues in that case?

Orrick: The San Francisco County Jail, like too many jails around the country, has not been kept in good shape. As the public demands that more and more people be sent to jail, the jails become crowded. A civil rights prison case was filed in my court by Professor Morton Cohen and John Hauser of the McCutchen office as counsel. For a matter of years, two years at least, I would get reports from them and from their staff as to what happened, and I would get the sheriff into court. Nothing much did happen. In any event, the city did nothing, and we needed help. We needed the strong backing of the Mayor and the Board of Supervisors, as well as the Sheriff. The Sheriff was doing his best to make the changes suggested in our proposed consent decree, but he could not get assistance, primarily financial assistance, from the City.

Accordingly, I held a status conference at this time. I told the City, represented by the City Attorney Louise Renne -- who is a very good lawyer, I might add -- that I would no longer stand for complete disregard of my proposed order, and that, as of now, I was making it an order and, if it wasn't complied with, I would impose appropriate sanctions, possibly civil in the form of heavy fines, daily fines, and criminal in the form of commitment to the custody of the United States marshal.

Van Nest: I take it you were not able to resolve the case by means of any sort of consent decree?

Orrick: We had a consent decree, but the City failed to implement it. There wasn't any question about the condition of the jail. I had the declarations from counsel. It hadn't been too long since I had visited the jail in connection with the San Francisco Crime Commission.

Van Nest: So, you had firsthand experience with the system and the conditions of the jail.

Orrick: Yes.

Van Nest: Your order was imposed but disregarded prior to your meeting with City Attorney Renne?

Orrick: The order is now being carried out.

Van Nest: What changes have you made in the jail?

Orrick: Changes in "the hole," proposed construction of modular cells to put out in San Bruno, and a number of other things. That is the main thing.

Van Nest: Primarily addressed to overcrowding?

Orrick: Yes.

Van Nest: And providing better physical conditions for inmates?

Orrick: Yes.

Van Nest: In these cases, the school case and the jail case, did you feel as though you were acting as a judicial activist, as the term is being used today?

Orrick: Yes.

Van Nest: Is that something you think is important for federal judges to do?

Orrick: Well, I disapprove of it in principle. But, in these days when we are considering the benefits of the three-layer power structure set

forth in the Constitution, and when we look at what the executive branch is not doing and what the Congress is not doing, in order to continue the great country that we have, the federal judiciary has to take on that kind of power. As I say, I don't think it's a legal problem, so much as it gets to be an administrative and political problem. It is perhaps best illustrated by one of the great federal judges, Frank M. Johnson, who was recently appointed to the Eleventh Circuit and who was the judge in the Middle District of Alabama, where he took away from the Governor, his former college classmate, George Wallace, jurisdiction to run the mental hospitals, the University of Alabama, and the prison system.

Of course, that is what happens daily. Every single day, you will see one or more stories in the newspapers, the lead of which is, "A federal judge yesterday," and then he did something like stop people from striking, holding the Secretary of the Interior in contempt because of his failure to carry out a congressional statute, things like that. So, to keep the country running, the federal court has to step out of what should be its main role.

Van Nest: Are you troubled by the frequency with which federal judges are being called upon to intervene in the life of the country?

Orrick: Yes. It's all too often. It takes us back to the oft quoted de Tocqueville report in 1735, wherein he said that Americans love to make legal problems out of every personal or economic problem that they may have. And it's much truer today than it was then. Some people argue that it keeps the country in order, that there should be a forum where every person who believes he was wrongfully terminated, for example, can come and tell his story. There are lots and lots of things like that, which are probably worthwhile from the point of view of the country, but which have no place in a federal court, in my view.

That isn't to say that I think we should have specialist courts like the tax court. Many people say in the antitrust bar we should have a court that is limited to considering antitrust cases and would require particular expertise. Well, this has been in effect at the Federal Trade Commission with not any great amount of success. I am strongly opposed to the so-called specialist courts.

Van Nest: You would rather keep it all within the federal bench, as it is today?

Orrick: Yes, because it has worked.

Van Nest: We have talked about some of the important cases you have handled. Can you think of any other memorable courtroom moments in cases of lesser importance?

Orrick: I remember one case very well. It was a contract case between two people who hated each other and were unable to keep their feelings out of the courtroom. It was a jury trial, and the plaintiff had just finished testifying and making a statement about what was said.

Then the defense was to put in its case through the defendant, who took the stand. The defendant was obviously angry, and he said, pointing his finger at the plaintiff, "That is a goddamn lie, and you are a" -- and with that, he went up backwards and slumped in his chair. I looked over. A juror had vaulted over the bar and came up to massage his heart to see if he couldn't do something. We called the doctor in the building and got the ambulance over. Those were the last words that that defendant said on this earth. He was dead on arrival at the hospital.

Van Nest: Do you have any other cases that were particularly memorable?

Orrick: Well, I had one case that amused me because it was really trying a police dog to determine whether he had been properly instructed in his duties. A San Mateo policeman in the dog police section was in a gas station which faced on El Camino Real at dusk one Sunday evening. He observed a "hot rod" exceeding the speed limit coming up the highway. He finished filling his car with gas and took off after the hot rod.

The hot rod, seeing that he was being chased, turned up a side street and into the driveway of a house in which there were no lights. The officer, with his dog in the back of his car, stopped and went up to the driver of the car and asked him out and told him to come down to the police car and take everything out of his pockets

and put it on the hood.

In the meantime, he had called for a backup car, which had just arrived. The defendant put everything on the car. Then the officer said, "Put out that cigarette." The defendant flicked the burning cigarette into the car where it got Danno, the police dog, right on the soft part of his nose.

In the meantime, the defendant had started to wrestle with the officer. They were going back and forth in front of the open window. Danno had a chance to get ahold of the defendant's ear. Then Danno jumped out of the car. He did that because a woman, who was in the car with the defendant, came out and was screaming and hitting the officer on the back. The officer threw her off. She fell down on her back. She was pregnant. Danno, as he was taught to do, put his two paws on her shoulders.

Van Nest: And pinned her down?

Orrick: And pinned her down.

Van Nest: How did Danno do at trial?

Orrick: Danno was superb at trial. Counsel wanted to bring him to court, but I declined. I was calling the earless man the defendant. He was actually the plaintiff in a civil rights suit. He had his hair grown over his ear, but he showed me his ear. I think the jury came in for Danno.

Van Nest: Have you ever thought about moving up to the Court of Appeals?

Orrick: No.

Van Nest: Is that something that is attractive to you?

Orrick: No, it isn't. I have the opportunity, which I take -- almost every time -- to sit on the Court of Appeals three or four times a year. I enjoy the argument and the work. We have our fair share of opinions to write. But that is enough. It's just too lonely in the Court of Appeals. You never see anybody. You are always writing.

You don't see the law, the real law, being made. The law is made in the trial court, as we both know.

D. Reflections on Judicial Philosophy

Van Nest: You have developed a reputation in our district as a real stickler on decorum and proper behavior by lawyers. Why is that so important to you?

Orrick: Well, it's of the greatest importance because of what I said previously. In my view, the federal judiciary is the most important branch of the government in many ways. And, like all of our institutions, it is fragile. It demands, much as a church demands, a certain amount of dignity. And, further than that, if the lawyers know that they are going to have to behave in a dignified fashion, they are likely to be better prepared and to get along better in court than otherwise.

I think that a lawyer, as I say over and over again, is above many, many other types of people in our society. He or she is creative and bright. They are problem solvers. That is what makes the society stick together. So, believing, as I most sincerely do, that the lawyer's job is important and that he is important, I have little regard for lawyers who are not prepared and who do not treat their clients properly by virtue of lack of preparation. And, further than that, in a controlled courtroom, you get through your trial much easier if everybody knows the rules.

Van Nest: What is the toughest part of being a federal judge?

Orrick: The most difficult part, by far, is sentencing.

Van Nest: What is it about sentencing that makes it the most difficult feature of your job?

Orrick: Well, you must take on the qualities of the Almighty. You have to make your own evaluation of what the defendant is going to do in the future. Nobody can tell that. But judges have to do it. There have been many efforts to take judges off that hook. One way is by having the Parole Commission do the sentencing or giving it indefinite sentences, or by the effort now to give the court sentencing guidelines.

But none of those have worked. The sentencing is best done by conscientious judges who have gotten all the information that they can get from the defendant and from the defendant's counsel and from the probation officer. And then use common sense. There is constant criticism of the courts because of alleged disparity of sentencing. I would defend courts against that. Every person's case is different. It's one thing for a child of seventeen with no prior record to rob a bank, where an experienced bank robber of the age of forty-five with a long rap sheet does the same thing and gets a longer sentence.

Van Nest: Isn't there something to the criticism that today, even among federal judges, there are wide differences in sentencing for crimes that are substantially similar, and that a defendant's fate shouldn't hang so much on the luck of the draw?

Orrick: There is, without doubt. And that is because all human beings are different. The criticism is well taken.

Van Nest: There's a current effort afoot, in fact, to implement new federal guidelines for sentencing. Do you support the effort that that commission has made?

Orrick: No, I don't. I have tried to follow those rules, and it's just a waste of time. In the end, you are going to come back and use your own common sense.

Van Nest: Judge Orrick, you served for four years as one of the nation's top legal officers in the Department of Justice. Does that have any impact on the way you treat your job as a federal judge?

Orrick: Well, it's been helpful because, as assistant attorney general in two

divisions of the Department of Justice, I learned a great deal about the operations, not only of the Department of Justice, but of the other departments which we represented in court. So, when I have a problem that involves the Pentagon, and the local United States Attorney doesn't seem to be getting any place with it, I tell him what to do. In fact, I order him who to telephone and to report back to me. In many cases, I know the section chief that he ought to be talking to. Undoubtedly, as Justice Holmes said, law is not logic; law is experience. And those experiences impacted on me in the way I have described previously. I think it has been of help.

Van Nest: Has it made any difference to you, in the manner in which you view the government, when it is a party in the civil and criminal cases before you?

Orrick: No. I don't think it has. I think that I treat the government the way I treat it now whether I had worked for it or not. In other words, I recognize the government, as every federal judge must, as the biggest and most frequent litigant in the judicial system. But that doesn't give it, by virtue of that kind of prominence, any advantage over a private litigant. I do my best to treat the government the way I treat a private litigant.

Van Nest: How would you sum up, Judge Orrick, your judicial philosophy after fourteen years on the Federal bench?

Orrick: My judicial philosophy, that is, my system of principles, which I endeavor to apply in carrying out my duties as a judge, is best summarized by the great English lawyer and philosopher Sir Francis Bacon. He said, "Judges should remember that their office is to interpret laws and not to make or give laws." As Alexander Hamilton points out in the 78th Federalist, judges should be appointed who "should be bound down by strict rules." And it is their duty to interpret them.

And I would emulate the philosophy which was adopted by my good friend, Associate Justice Potter Stewart. In his recent book, The Supreme Court, Chief Justice Rehnquist, speaking of Potter, says, "He was also, I think, of all the colleagues with whom I have served, the one least influenced by considerations extraneous

to the strictly legal aspects of a case. He was, that is, the quintessential judge."

I think of myself as a man of the law, and I tell my law clerks that I am a man of the law and that I agree wholeheartedly with the judicial philosophy which I have discussed above. And, conversely, I do not believe in what some of my colleagues term "social engineering." I have no doubt that the work of the federal judiciary is the most important work going on in this country today, and my every effort is to see that the work is properly done.

I don't think the country would exist today without the federal judiciary as we have it. If anyone doubts that, all they have to do is look at the morning paper and see what is going on in Washington and elsewhere in this country. You will find, every day you read a newspaper, the lead of at least one, and often more, stories is "A federal judge yesterday..." and that he did something like make a cabinet officer perform duties imposed upon him by the Congress, or any number of other things that should have been addressed by the executive or legislative branch of the government.

So, my belief is that there is no person in our great country that has a calling higher or more important than lawyers and judges. And it is my hope that we can strive to be and be judicial philosophers, mainly those who love the pursuit of wisdom in their daily ministrations of the law. I also believe that a judge must bring to his courtroom not only a profound understanding of the law, which can only be obtained by consistent research, but also a deep and abiding sense of the nature of his or her responsibilities in the administration of justice, which must be discharged freely and impartially and with great industry, courage and compassion.

The fulcrum of our system of government is the federal judiciary. Our courts are fragile institutions to be protected by judges and lawyers from attack by those who fail to revere them. The judge's duty is to create and maintain decorum and order in the courtroom so that reasoned arguments will allow the light of justice to prevail over the heat of passion.

Therefore, it goes without saying, in applying this philosophy

to the varying and many cases a judge should -- and I must admit that I have been sometimes unsuccessful in doing this -- show unfailing courtesy, compassion, patience, industry, dignity and understanding to all persons, including the lawyers, juries and other court personnel.

Van Nest: Thank you, Judge Orrick.

APPENDIX I

SERVICE FOR CIVIC ORGANIZATIONS

Charitable:

President:	Community Chest of San Francisco Family and Children's Agency Mission Neighborhood Centers The San Francisco Foundation

Schools:

Trustee:	The Thacher School The Katherine Delmar Burke School Katherine Branson School San Rafael Military Academy

Other:

President:	San Francisco Opera Association
Trustee:	Grace Cathedral Corporation Children's Hospital of San Francisco Graduate Theological Union San Francisco Law Library Episcopal Church Foundation The Legal Aid Society of San Francisco San Francisco Symphony Association World Affairs Council of Northern California
Director:	San Francisco Bar Association Study and Report to Eisenhower Commission on Violence at San Francisco State College 1969: "Shut It Down: College in Crisis"

Member:	Board of Governors, American Red Cross Program Committee of Commonwealth Club of California State Committee on Public Education
Co-Chairman:	San Francisco Committee on Crime (1969)
Member:	Organizing Committee 1960 Winter Olympics Games
Citation Award:	Awarded Citation as Alumnus of the Year by Boalt Hall Alumni Association, University of California, 1980

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